THEORY OF THE JUST PRICE

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A Historical and Critical Study of the Problem of Economic Value

by

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INTRODUCTION

The Nature of the Problem of Economic Value

THE problem of economic value may be demonstrated by a comparison between the principle of distribution observed in a community organized economically on the basis of exchange and that followed in a community whose economic system is not so organized.

The simplest and most familiar example of a society in which there is no exchange is the patriarchal domestic community, whose several members (members of the family, servants, and others) are assigned their places by the head of the family.

The economic activity of such a community consists in procuring, looking after and distributing the goods required for its consumption. Each participant shares in this activity in two ways: by giving, and by receiving. On the one hand, he makes a contribution in the form of goods, money or services; a valuable contribution may also be made, in certain circumstances, in the form of the mere presence of a person (either as a member or as a temporary guest), if for any reason—the social esteem in which he is held, for instance—his presence is regarded as an advantage. On the other hand, the participant shares in the common life by receiving from the community

either material goods (accommodation, food, clothing, etc.), or immaterial advantages (education, company, etc.), or both.

In principle, it is the head of the family who decides what is to be given and received by each participant. The decision is taken arbitrarily, unless its freedom is restricted by law (as in the case of maintenance dues, for instance) or by tradition (hospitality usages). Sometimes a contract is concluded with an individual member of the household guaranteeing him, for example, the use of a particular room, or stipulating the exact nature of the food to be supplied to him, in exchange for specified services; but agreements of this kind, which belong to the economy of exchange, will be disregarded for the moment, since only societies organized entirely without exchange are at present under consideration.

There is not necessarily any fixed relation between the total goods and services furnished and received by the members of the community, or any detailed scheme of *quid pro quo*. At meals, for instance, the father and mother may reserve the best morsels for themselves, giving the children only what is strictly necessary; or they may, on the contrary, deliberately go hungry in order to leave them as much as possible. Accommodation may be allotted in a variety of ways. In short, the distribution of every kind of commodity is arbitrary, and may differ from household to household; it is not generally determined, at any rate exclusively, by the precise amount of each individual's contribution to the common pool, but rather by the requirements of the individual member and

the extent to which the head of the family appreciates them and desires to meet them. In the final analysis, the essential question is the status occupied by each: the parents take what they think right, simply because they are the parents; the eldest son, perhaps, receives more attention than his younger brothers and sisters, because he is the eldest; or perhaps it is the youngest child who is given preferential treatment, because he or she is the favourite; and special attention is given to the guest, simply because he or she is the guest.

What has always been the rule in the family community,[1] and is still today so usual that it is everywhere taken for granted—indeed, the reader is perhaps wondering why it is here considered worth while to analyse the relations between the members of the domestic circle—is characteristic also of the wider economic units which existed in primitive societies.

Man's economic life has not always been based upon exchange. Before it came to be organized in this way, as it is at the present day, not only families, but whole villages, tribes, and indeed communities of all sizes satisfied their common requirements in respect of economic goods through the co-operation of all their members. The entire product of this joint labour was generally devoted exclusively to the satisfaction of the members' needs, while exchange with other groups, if it occurred at all, was more or less accidental and of

[1] "In Russia and in Rome, alike, the father of a family, or patriarch, exercises a despotic authority over those who are subject to him. He regulates the order of labour, and apportions its fruit." (Emile de Lavaleye: *Primitive Property*, translated by G. R. L. Marriott, London, 1878, p. 175.)

minor importance.[1] The ancient economic units based on slavery, and the socage-farms operated by the labour of bondsmen, which throughout the Middle Ages gave European economic life a fairly uniform character, were based on principles analogous to those still found in the family today.

In the slave enterprises of antiquity there was sometimes—though by no means always—a very great difference between the standard of living permitted to the slaves and that enjoyed by their masters; at times—as, for instance, during the Roman classical period—this disparity was positively inhuman. Moreover, the conditions offered to the various categories of slaves and others belonging to the *familia*, say, of a wealthy Roman, differed according to the rank occupied by each category, and varied even between individuals according to the degree of respect enjoyed by each. On the mediaeval socage-farms these differences were generally much less marked, at any rate during the first few centuries, and particularly where the farms had developed out of the old district and village communities. Nevertheless, it is precisely in Germany that the custom existed, from the earliest historical times,[2] of dividing up land held by the district and village communities (then still free peasant

[1] "The individual owns what is assigned to him by the district or village co-operative community—house, yard, garden, ploughland, etc. He pastures his beasts, cuts his wood, fishes and hunts by permission of the same authority, and sows and harvests his crops in obedience to its desires and instructions. He is hardly allowed to enter into intimate contact with persons who are not members of the community to which he belongs." (Schmoller: *Umrisse und Untersuchungen zur Verfassungs-, Verwaltungs-, und Wirtschaftsgeschichte*, Leipzig, 1898, p. 4.)

[2] Cf. Tacitus: *Germania*, ch. 26.

communities) *secundum dignationem* (according to social rank). Throughout the entire duration of this process of land distribution, differences of power, prestige, birth, office, and wealth were certainly taken into account.[1] As time went on, both the freemen and the bondsmen gradually fell into an increasing number of sharply demarcated orders—the various ranks of the nobility, the common freemen, and the clergy on the one hand, and the bondsmen and the copyholders on the other. These differences of rank found their most striking expression in the institution of wergild, the expiation demanded for homicide, whose severity was generally graded in accordance with the rank of the person killed; the gradation from order to order was sometimes very steep, whereas within each order a single rate of fine was usually applied to all. The degree of differentiation between the orders varied according to the size of the economic unit; sometimes this unit was very large indeed, vast territories being controlled by secular or spiritual lords who were both their political governors and their owners. The rank of the individual within such a unit determined not only the importance of the share of the total property to which he was entitled, but also, in the main, the nature and amount of the services required of him by the community or the landlord.[2]

An entirely different picture is presented by modern society, organized on the basis of exchange between inde-

[1] Cf. Inama-Sternegg: *Deutsche Wirtschaftsgeschichte*, 1879, vol. I, p. 112.

[2] Cf. Inama-Sternegg: *idem, passim*; also Ashley: *An Introduction to English Economic History and Theory*, London, 1920, vol. I, ch. I.

pendent persons and employing money as its medium. Here, too, of course, at any rate in the countries adhering to the capitalist economy, the family still retains, in the main, the character of an association of consumers. But the *typical* form of economic activity in the capitalist countries of the present day, as opposed to the "family system" of earlier times, is the individual, independent pursuit of a calling, whether in agriculture, industry, commerce, or a liberal profession, within a system of exchange. Here the individual's income is determined not by a scheme of distribution applied by some large economic unit to which he belongs as a subordinate, but by a series of private contracts which he has concluded with other persons. The particular services rendered or goods supplied by the two parties to a contract are always interdependent. The nature and amount of the goods and services provided by one party are determined by the nature and amount of those supplied by the other. The total income of the individual, therefore, corresponds to the goods and services which he offers on the market in exchange for the goods and services of others. Value is dependent no longer upon persons, as in the more primitive communities of earlier times, but upon things—i.e. upon that which persons offer or supply; it has become *impersonal*. The person's ability to earn an income has been split up, so to speak, into his several capacities in respect of the provision of particular goods and services. Every commodity and service which can be offered in exchange by one economic agent to another would thus seem to possess the ability to call forth a counterpart, as it were, and attract it to itself.

This ability or property is the value in exchange (market value) of a service or an article. Throughout the remainder of this book the simple term "value" will be used, but it will denote the ability of a commodity or service to provide, in the form of a price, an income or part of an income to the person who offers it to another.

In all contracts concerning goods and services to be supplied and received, the question of the rank and personal merit of the parties usually remains quite in the background; often—as when a contract is concluded by an agent on behalf of an undisclosed principal, for instance—one party knows nothing whatever about the identity of the other. It is no longer *status*, but *contractus*, that governs the relation between what is offered on either hand.

The foregoing brief description of the primitive or "family" economy and the pure exchange (money) economy is intended to reveal, with exaggerated emphasis, the contrast that exists between the two systems with regard to the distribution of income. But it must be remembered that historically there was no sudden or final transition from the one to the other, and that the earlier system persisted over a wide field—much wider than that of the family—not only after its successor had arrived on the scene but long after it had attained supremacy. This resulted in a multiplicity and confusion of phenomena which must be ascribed some to the one, some to the other phase of development. Most important of all, the idea of the community's responsibility for the distribution of goods among its members lived on into the epoch of the money economy, in which such distri-

bution was coming to be regulated increasingly by private contracts regarding goods and services to be provided and received directly by the contracting parties. The consequence was that these two quite different principles of distribution tended to merge and to influence each other.

The most important instance of such compromise between the family and exchange economies was the idea of the "livelihood" as understood at the time of the gilds.

It was the principle of the fair livelihood that had characterized the family system. The guiding thought in the distribution of goods under that system had been that every peasant family should dispose of sufficient land (in one or several pieces), and land of sufficient fertility, to supply its own needs. This idea, which originated in the peasant mind, later passed over into the sphere of industry and trade, where it persisted, as long as handicrafts and the gild system prevailed, in essentially the same form: a man's craft should provide him with a living. With the coming of the exchange economy, however, the individual's income had begun to be determined by his own professional activity, that is, by the amount and quality of his work and the measure of success that he obtained in marketing his produce; from the legal point of view, a person's income was the result of all the private contracts concluded by him with his several customers. The compromise between the two principles took the form of a control of prices by means of rates, imposed from above and based upon the principle that every member of a gild should obtain, as a result of his

trading activity—i.e. from the total payment received for his products—an income sufficient to meet his needs or guarantee his "livelihood."

But the old influence of status or rank upon the distribution of income survived, by a long time, the coming of the new system. When it became customary to charge money rents for property held in fee, long after the advent of the money economy, these rents usually varied according to the status of the tenant. Generally speaking, it was not until the later phases of the money system that rents came to be calculated according to the character (in particular the yield, or potential yield) of the land. And until quite recent times the law of many countries provided that in distraint proceedings the so-called allowance of the bankrupt—that is, the amount of property that must be left to him as his means of livelihood—might vary very widely according to his position in society. Further evidence of the same kind of survival is offered by many of the privileges formerly granted to the nobility and higher clergy, in various countries, with regard to taxes and tolls of different kinds. Such preferential measures today appear strange in the extreme, and can be understood only in the light of the primitive principle of distribution described in the foregoing pages, with its emphasis on rank as the determinant of price. The degree in which the existence of class differences, even in the sphere of property and income, seemed normal and just in this early epoch, is revealed in the characteristically frank allusions made to them by the scholars, to which attention will be directed at a later stage.

The contrast between the primitive economy and the exchange or money economy is not a purely theoretic one, of importance only to the economic historian; it involves an opposition of interests which is of great practical significance at the present time.

The coming of the money system necessarily led to a conflict between those persons whose income was determined by the early principle, from which exchange was excluded, and those for whom the exchange economy introduced a different regulative principle. As the new system developed, the sense of danger grew among those to whom tradition or the law had hitherto assured an income consisting not of direct remuneration for services or goods furnished, but of payment of a due claimed in virtue of status. Those, on the other hand, who were forced by the new system into a situation in which they must either hire out their labour or sell their products in the open market in order to obtain a livelihood, found their security endangered by the uncertainty attending these operations. The amount of their income became dependent upon accidental movements of the market. Sometimes things would turn out satisfactorily, or even very well; but sometimes business would be poor or very bad, and the worker or employer whose lot was bound up with these fluctuating conditions would have to go hungry. This state of affairs, whose dangers became more and more evident as the evolution of the money economy proceeded, contradicted the traditional belief, still alive in men's minds though the old patriarchal system was dead and gone, that every individual was a member of an all-embracing economic community

which was somehow responsible for seeing that he received a fair livelihood.

This conflict gave rise to the problem of the just price (*justum pretium*), that is, to the question how the prices of goods should be fixed in order to satisfy men's sense of justice. It also led inevitably to the demand that the authorities should do all in their power to enforce such just prices, even in the face of opposition. This question and this demand constitute the essence of all the economic thought of the Middle Ages.

An attempt will be made, in the following pages, briefly to indicate the phases through which the problem of the just price—as a part of the economic problem of value—has passed in the course of history, and the influences which have affected the attitude of economic science towards it.

CHAPTER I

The Idea of the Just Price and the History of the Theory of Value[1]

I

Roman Law[2]

THE association of the idea of justice with price-fixing, the conception of a *justitia pretii*, presupposes an economic order in which exchange has come to play an important part. The emergence of such a conception was impossible until the practice of exchange had so far developed as to involve cases of wrong or unjust prices, the need for whose rectification impressed itself with urgency upon the observer. Even in the times of the primitive or family economy, when exchange was only of occasional importance, there were indeed in every country laws fixing the value of particular kinds of commodities; the usual purpose of these laws was to regulate compensation for injury by means of fine schedules and special provisions regarding wergild. But it was not until much later that the authorities interfered with the free conclusion of contracts by regulating compulsorily the counterpart to be

[1] Cf. the author's *Geschichtliche Entwicklung der modernen Werttheorien*, Tübingen, 1906.

[2] *Ibid.*, pp. 5 ff.

furnished by each party in exchange for the goods or services provided by the other. And such interference in the process of distribution under the exchange system proves that when it occurred prevailing price levels had already given rise to some measure of dissatisfaction.

The evolution of Roman law has had a profound influence, in this connection, right up to the present day. The conception of the *justum pretium* was first formulated, in Rome, in view of the necessity of laying down special rules for the guidance of magistrates in cases in which they had to pronounce upon the value of a commodity or service. Beginning from the principle of absolute non-intervention in the negotiation of the price by the parties to a transaction, Roman law completed its evolution, towards the close of the Empire, with legislation which restricted freedom of exchange very severely and sought to fix the price of every kind of commodity in accordance with standards regarded as objectively just.

In the main, it is only the purely juristic, formal aspect of the development of Roman law that has been handed down to the present day; the Romans did not excel in theoretic speculation. The political and philosophic ideas which were the driving forces in this development must therefore be reconstituted, as it were, from the actual evolution of Roman legislation and the recorded statements of contemporary jurists, and in particular, of course, from the pandects.

An enquiry along these lines will be of value here not only because the concepts formulated by Roman law have influenced the whole course of the legal development of Western civilization, but also because such an

enquiry will show with startling clarity that the evolution of the Roman system, which was unaccompanied by any "theory" in the current sense of the word, proceeded from start to finish, as far as the problem of value is concerned, between the intellectual poles which govern the value theories of modern times.

In early ages the whole field of human life, including economic activity, seems to have been dominated in a large measure by the power of tradition. How long and to what extent prices in Rome were so determined is not, for the moment, the important question. The Twelve Tables, which date from the middle of the fifth century B.C., made no attempt to interfere with them, and during the first centuries of the Roman era known to history they were still left entirely to the mercy of personal caprice; not even the most extravagant prices were checked by the legislator. And this is perfectly comprehensible if account is taken of the general spirit of Roman civilization at the time.

The regulation of prices by the moral power of tradition, as found at these primitive levels of civilization, applied only to transactions between members of one and the same tribe. Law was here supplemented by a sense of mutual moral obligation which permeated the whole group. In dealings between persons belonging to different tribes, no such sense of obligation was felt, for there was no bond to unite the parties. Neither the worship of common gods—for each tribe had its own deities—nor a consciousness of common economic interests encouraged the members of different tribes to aid one another. On the contrary, each sought his own

advantage at the expense of the others. Where strangers were concerned, there was no need to pay any heed to ethical or social considerations. To have outwitted and cheated an opponent was regarded as a just cause of pride. In short, transactions between members of different tribes were left to be settled by tug-of-war between individual egoisms.

This state of affairs has persisted, in its main lines, throughout history, and still exists today wherever suitable conditions prevail, and in particular in the newer countries. In North America, for instance, the era is not long past, and its effects are still at work, in which, under conditions closely analogous in this respect to those of ancient Rome, all methods of combat were allowed in the price-struggle, and a man's sole defence against fraud lay not in appeals to the courts but in his observance of the precept: "Help yourself!"

The moral bonds which had united the members of the primitive Italic tribe had long ceased to operate in the society of full Roman citizens as it existed at the time of the Twelve Tables. The Latin markets, it is true, were in existence much earlier than this; but the communities whose members met at them regarded one another as strangers, if not as enemies. The alliances concluded later were the result of wars. Trade between the different communities was conducted entirely in a spirit of individual gain, in which the desire to buy at the lowest possible price and sell at the highest predominated. When later the operation of *jus civile* was extended beyond the borders of Rome, and the communities of the Latin league were granted the *commercium*, that is, the advantages

of the Roman civil code, the atmosphere in which business was conducted did not change overnight. For although all were now equal before the law, there was no common tradition to limit the disorder of their economic relations.

A similar course of evolution was followed, within the several communities, by the relations between the different classes of citizens. Over against the Roman patricians stood the *plebs*, who included in their ranks elements of the most heterogeneous origin—liberated slaves, former citizens of conquered communities and their descendants, and so on. In the trade relations of these persons, who constituted the citizen class at the time of the Twelve Tables, the bond of ancient Roman blood meant nothing. A deep gulf separated each group from the others. During the wars—and Rome was nearly always at war—the rich could leave their farms to be run by their slaves. The poor, however, had no such aid, and their property was neglected when they had to leave home and take the field. In order to restore it, on returning, to a condition in which it was capable of providing a livelihood, they were obliged to borrow from the wealthy landowners, for in ancient Rome these were also the financiers and speculators—the wholesale trade of Latium having been in their hands from the outset. The weak were thus placed at the mercy of the strong, and no traditional bond of moral obligation existed to prevent the exploitation of their distress by means of exorbitant interest rates. What imponderable influence, in this pagan era and under these social conditions, could have hindered the economically powerful from pursuing

ruthlessly the aim of maximum profits in every kind of business transaction? It is characteristic of the times that the prevailing law of bankruptcy permitted the creditor to sell his defaulting debtor into slavery, together with his family, or even to kill him.

Nor was any attempt made to modify the law by interpreting it, in the courts, in such a way as to favour the poorer classes. For ever since the end of the Monarchy the administration of justice had been under the exclusive control of the patricians, and as the great majority of these were rich, or at least well off, they benefited from a legal system which enabled them to reduce the propertyless masses to a position of economic dependence. They did not think for a moment of introducing into the legal system a theory of value which would have justified prices other than those which they obtained by taking full advantage, in each particular transaction, of their position of economic and social superiority. In a very fundamental sense, therefore, the period was one in which the idea of free trade was already in practical operation.

The Twelve Tables introduced a single exception to the rule of freedom, by limiting the rate of interest on loans. This measure, however, did not spring from the idea that every loan had a certain value, and that in justice the interest charged, which constituted its counterpart, should not be allowed to exceed this value. The motive was a purely political one. The revolt of the *plebs* in 494 B.C.—*secessio in montem sacrum*—had been due primarily to the pressure of usurious interest rates, and it was desired to prevent a repetition of such a dangerous

movement. The legislators, who belonged to the dominant, wealthy class of patricians, probably regarded the provision rather as an infringement than as an expression of natural rights! The spirit of ancient Roman law is well illustrated, in this regard, by Cicero's observation (*Verr.* IV, 5, 10): "(*majores nostri*) *putabant ereptionem esse non emtionem, cum venditori suo arbitratu vendere non liceret.*"

This spirit, however, gradually changed as the number of Roman citizens fell behind that of the subjects who were not citizens, and as the scope of *jus civile*, which regulated only the legal relations between the citizens, was accordingly restricted in favour of *jus gentium*, which grew up in order to meet the needs arising from legal transactions not covered by *jus civile*. The importance of these transactions increased steadily, for as Rome's military power developed the population under her control grew, and she became more and more exclusive in the award of citizenship. About the third century B.C. citizenship rights ceased to be granted to members of subjugated communities. As the Romans emerged from the narrow life of a small farming people and evolved increasingly complex economic links between one another, with other subjects of the growing State, and with foreigners, the importance of *jus gentium* grew. Inevitably, the various elements of the population tended to merge into a single whole, united by gradually strengthening ethical bonds. In *jus gentium*, therefore, lay the driving power which was to bring about the expansion of Roman law as a whole.

The traditional principles and procedure of *jus civile*

found no place in *jus gentium*. Here, in any dispute between citizens and non-citizens, or exclusively between non-citizens, the judge was obliged, in the absence of definite rules, to have recourse to what seemed to him *aequum et bonum*. This practice was prevented from deteriorating into mere arbitrariness by the requirement that every judge must issue a proclamation, at the beginning of his period of office, announcing the rules that he intended to follow. And a standard formula soon came to be adopted in these proclamations, to the effect that the judge undertook, in the absence of fixed rules, to pronounce his sentence *ex fide bona* and in accordance with *aequitas*.

What is the criterion by which the *aequum* is to be recognized? What, in particular, is the standard by which the justice of a price is to be checked? Opinions regarding the exact content of the ethical conception here involved have certainly always differed from one age to the next and from one person to another—and do so still. But it is equally certain that the administration of the law must always be directed, in accordance with firm guiding principles, to the pronouncement of consistent decisions, and that economic intercourse itself necessarily tends towards and attains such consistency. Rome's evolution towards a fixed principle of this kind is marked by numerous pronouncements of her jurists, which are summed up and given full authority in the *Digest*. The short and pregnant phrase of Pomponius is particularly significant: "*Jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiorem.*"[1]

[1] 1.206 *D. de Reg. Jur.* 50, 17.

The appeal here made by Pomponius to natural law reveals the origin of the underlying thought which determined the course of evolution followed by Roman law. Law is the product of its time; it grows up in closest contact with the cultural life of the community whose affairs it regulates; its basic principles correspond to prevailing intellectual and economic conditions. The intellectual life of Rome was mainly under Greek influence, for the Roman creative genius, so brilliantly evident in jurisprudence, was impotent in the sphere of philosophy. And this influence came not so much from the classical thinkers—Aristotle, Plato, and the rest—as from the schools existing at the time. The training of the Roman jurist may be said to have been grounded mainly in the Stoic philosophy. It was thus the Stoic conception of natural law that underlay the development of *jus gentium*; only in the light of Stoic thought can this development, and in particular the notion of *aequitas*, be understood.

The Stoics held that the world order is a rational one, and that there is a necessary harmony between Nature and Reason. From this doctrine they drew the ethical conclusion that the supreme law of human conduct, and the highest aim of human effort, consist in the accordance of the individual's life to the highest of Nature's laws, namely Reason. "*ὁμολογουμένως τῇ ζύσει ζῆν*" (live according to the laws of Nature) was the Stoic's guiding moral principle. The man who observes it is virtuous; and he alone is truly wise, for he alone has attained the only form of goodness that can render a human being happy in all circumstances and under all conditions. The

Stoic method of ascertaining what is reasonable was to observe the behaviour of animals and children. Such observation showed, they held, that the fundamental instinct of every living being is that of self-preservation; whatever serves to satisfy this instinct, therefore, serves the cause of true reason. The wise man is he who values all things according to their capacity to promote a reasonable, natural life. Wealth is desirable, because it facilitates virtuous living.

Every rational being, because subject to this one universal law of nature, is part of a rational whole. What is natural and reasonable for the individual, therefore, must also be natural and reasonable for all mankind; and hence the individual who follows the law of reason necessarily benefits the whole of society.

This doctrine reconciles the two principles of egoism and *aequitas*. It asserts that the individual's attempt to secure profit for himself does not constitute an obstacle to the realization of that which, from the general philosophical standpoint, must be regarded as *bonum et aequum*; on the contrary, *aequitas* requires that individual egoism shall be given free play in the economic life of the community. As this line of thought developed, the Roman principle that the law should not intervene in the processes of exchange, particularly in that of price determination, was extended to the realm of *jus gentium*.

Here, however, the Stoic doctrine imposed an important limitation. The assumption that individual profit coincides with that of society can be made, of course, only in respect of profit properly so called. Since all men belong to a single society, only those who so act as to

benefit this society are truly wise. Individual conduct, therefore, may be guided by considerations of private gain only in so far as the pursuit of this end does not weaken or threaten the bonds which unite mankind.

The first piece of Roman legislation which expressed this idea by laying down an equation of value considered as *just*, as opposed to a disapproved relation between the goods or services offered by the parties to a contract, concerned the protection of minors against fraud (*Lex Plaetoria—circa* 186 B.C.). It was followed by general legislation against fraud, and later by legislation making sellers liable for defects found in goods which they have sold. This development illustrates the progress made by the idea—quite foreign to the earliest Roman law—that the legislator should under certain conditions stipulate, in place of that negotiated by the parties to a transaction, a value-relation corresponding to the judge's conception of the *just price*.

The idea of the just price (*justum pretium*, *verum pretium*) thus became a *legal concept*, destined to retain practical significance during the centuries to come.

Upon what basis was this judgement of the "right" value to be founded? How was the judge to determine the *justum pretium*?

Many passages of the pandects, particularly those referring to the liability of the seller of a defective article, show that the usefulness of a commodity was regarded as the essence of its value in exchange. But the law provided expressly that mere personal likings and whims (mere "fancy") must be left out of account in estimating such usefulness. The judge was thus required, in forming

an estimate of value in use, to place himself in the positi of the normal, average person. This was an idea w which the Roman jurists, trained in the Stoic philosopl were thoroughly familiar; for the Stoics had never tii of describing, in the greatest detail, the wise, ideal m whose every thought and action was right. And since t estimate of value in use was to be based on the views the normal person, the estimate of value in exchan which was based upon it, must be normally applicab It was the value thus determined that constituted t *justum pretium* as conceived in the legislation here und consideration.

Very different conceptions, however, appear in t legislation of the later Empire. The change is clea indicated by two laws promulgated under Diocleti The first of these concerned disputes arising from wl was called *laesio enormis*: the seller of an object for whi it was subsequently found that less than half the i price had been paid was given the right to cancel t sale, unless the purchaser made an additional paym bringing the total sum paid up to the full value. T second was an edict laying down price schedules f every kind of commodity and service, and prescribi the death penalty for persons charging prices in exc of the fixed rates. Freedom of contract had forme been restricted, with a view to the substitution of fairer price for that fixed by negotiation between t parties, only in so far as the value-judgement of t plaintiff appeared to have been affected, at the time of t conclusion of the contract, by one of the species of fra already referred to—whether intended by the other pa

or not. In the Diocletian laws, on the other hand, the price defined as just was made compulsory, even in cases in which both contracting parties had been perfectly acquainted, during their negotiations, with all the facts needed for the assessment of the value, and had quite freely and deliberately agreed upon a different price. Thus the older conception of the normal, and hence "right," value became merged with a desire to fix all prices, throughout the entire business world, according to the right or true value of each commodity and service.

This change in legal conceptions reflected certain profound transformations that had taken place in the economic and intellectual life of the Roman Empire.

The economic golden age of the early Empire was long past. The process of decline which had now set in may be indicated by reference to two symptoms. On the one hand, the membership of the corporations, in which the manufacturing classes had for centuries been organized, was dwindling: from the beginning of the fourth century A.D. the sons of members of these *collegia* had to be compelled by law to join at the age of twenty, the corporations being entitled to claim, like runaway slaves, any who sought to evade this obligation by flight. In agriculture, on the other hand, a similar and equally grave symptom may be seen in the fact that during the reign of Constantine the *coloni*, unable any longer to bear the burden of taxation imposed upon them, began to seek relief in flight.

Faced with the dangers of this situation, the later emperors attempted to guarantee the producing classes

selling prices which would enable them to make ends meet—prices, that is, which would both cover their costs (calculated with reference to prevailing conditions) and leave them a profit. These subsistence prices received the sanction of the law. They were the prices recognized as just by the State.

2

Scholasticism[1]

The great migratory movements in which the Roman Empire disappeared threw Europe back to the stage of primitive economy. Centuries passed before markets grew up again in which the separate economic units could enjoy more or less lively commercial intercourse. Recovery in this sphere, which was due primarily to the Crusades, was accompanied by a revival of intellectual life, and scholars began to concern themselves with economic problems, which at this time, and particularly in the flourishing towns of the Middle Ages, were assuming practical as well as theoretic importance. The conceptions of Roman law were resuscitated, and its lines of development taken up where they had stopped; for throughout Western Christendom Roman law had been adopted as the basis of civil life. Economic developments, moreover, had led to governmental measures similar to those taken by the later Roman emperors: in the

[1] For a more detailed study of this period, see the author's article on *Die Lehre vom Gerechten Preis in der Scholastik* in the *Zeitschrift für die Gesamte Staatswissenschaft*, 1904, pp. 579 ff.

towns, the authorities had undertaken the regulation of trade, and in particular of prices.

The Middle Ages, however, differed from Roman times in this respect: that whereas the Romans had been concerned with the building up of an objective system of laws, and with such jurisprudential questions as related to practical legal problems, the scholars of the Middle Ages undertook the systematic elaboration of a theory intended to cover every aspect of the human activities under consideration. The economic problem which interested the Schoolmen was that of the *justitia pretii*—of the just price, or the price corresponding to the true value of the object to which it is set.

The mediaeval scholars who applied themselves to this problem were primarily theologians. Scholasticism adhered strictly to the Christian teaching. The Stoics had declared it wise to strive after riches, but Christianity taught contempt of earthly treasure. Stoicism had led to the principle of non-intervention in commercial operations, and to the view that legal provisions restricting economic competition were interferences of a purely exceptional character in a natural, and hence generally permissible, state of complete freedom to pursue individual gain; but Christianity proclaimed the supremacy of the contrary principle of Charity. The Church Fathers interpreted with the greatest strictness the injunction that a Christian should not cheat his neighbour, and the canon law required that the validity of all contracts, in whatever juridical category they fell, should be tested according to their conformity with it. Thus the Schoolmen, who conceived their task as consisting in the exposition of the

canon law and the writings of the Fathers, were compelled to seek an objective token by which it would always be possible to ascertain whether or not the value of two objects to be exchanged was the same—that is, whether or not a given price was just.

It was in Aristotle that the needed clue was found. "The Philosopher," as the Scholastics called him, was held in the greatest respect, and his writings were keenly studied. Albertus Magnus, indeed, placed his authority in regard to philosophy and the natural sciences higher than that of St. Augustine, whom he ranked first in matters of faith. In regard to the problem of value, as in many other fields, Aristotle had been a pioneer. He seems to have been the first among Western philosophers to distinguish clearly between value in use and value in exchange. His approach to the problems of exchange, like that of the Schoolmen, was primarily a moral one, his attention having been drawn to the question of the essence of exchange value in the course of an enquiry into the nature of justice. He held that in every exchange justice required, if not perfect equality, at least a certain right proportion between that which each party gave and received. The question then arose: How is this right proportion to be found?

In answering this question Aristotle introduced a completely new idea, which was to influence economic thought up to the present day: that *the comparability of the value of different economic goods presupposes the existence of something common to the goods compared.*

The author of this idea stated explicitly that it should

not be interpreted (as it has been in the more recent objective theory of value, most logically by Karl Marx) as meaning that the common "something" is inherent in the goods themselves. He had affirmed only that the objects of an exchange must all be "in a certain sense" comparable (*πάντα συμβλητὰ δεῖ πῶς εἶναι*), and added that in reality (*τῇ ἀληθείᾳ*) there could be no common measure for things that are completely different. Such a common measure, he said, could exist only—and does actually exist in the form of money—for the *need* which maintains the "uniting bond" between the parties to a transaction. But the notion having once been expressed that there was some common property inherent in all objects of value, Aristotle's commentators took care that it should not disappear.

The Schoolmen, as formerly the Stoics, believed that the value in use of a commodity could be ascertained from the view-point of human needs, by means of a normal estimate. And the religious force associated with the Biblical conception of the "righteous" man who, like the Stoic "wise" man, represented an ideal type accepted as the pattern upon which human conduct should be shaped, tended to strengthen this belief in an abstract, normal value in use attaching to human goods. To take normal value in use as starting-point, however, was to assume that the objective need expressed in the act of exchange is a fixed quantity. On this assumption, it was necessary to seek in the commodity itself the cause of variations in its exchange value.

Albertus Magnus appears to have been the first to enter upon this search. He held that two commodities

were equal in value, and their exchange therefore just, if their production represented equal amounts of labour and expense; value was determined by these two factors. This doctrine was adopted almost word for word by Thomas d'Aquinas, and having thus been expounded by the two leading authorities, remained supreme throughout the Scholastic period.

Equality of labour and costs could not have been adopted as the touchstone of equality of value had not a change first taken place in the traditional attitude of the moralists towards paid work. So long as slavery prevailed and most goods were produced by slave labour, it was impossible to measure the work involved in the production of two articles according to any single scale. Equality of remuneration for free and slave labour was inconceivable to the classical mind. The competition of freemen with slaves in the labour market had led even the philosophers, under the influence of popular prejudice, to despise both equally. Aristotle always referred in the most scornful terms to wage-labour of every kind, considering it ignoble; and the Roman shared here the opinion of the Greek, for Cicero writes depreciatively of the "*sordidi quaestus mercennariorum omniumque quorum operae non quorum artes emuntur.*"[1]

Christianity had paved the way for a very different attitude. Even in the time of the Church Fathers voices had been raised in denunciation of slavery, and the feeling soon became general that it was unchristian, since God had created all men in His own image. It was the emergence of this view that made possible the gradual

[1] *De Officiis*, I, 42.

recognition of human labour as a single and homogeneous productive factor.

Christianity, then, placed labour in a position of honour. But it went further than this, and asserted that he who does not work should not eat. When once this teaching had been assimilated, it was only a step farther, for those who were studying the problem of the measurement of value, to the position held by Albertus Magnus and Thomas d'Aquinas—that remuneration should be proportionate to labour. Justice, it was affirmed, demanded the observance of a definite proportion between labour applied and remuneration paid.

This affirmation gave rise to the question how the right and just proportion was to be determined, which involved the preliminary question: Does every application of labour deserve remuneration, and if the answer is in the negative, which do and which do not? It is remarkable that the writings of the Schoolmen, from Albertus onwards, in which questions of labour and other production costs are discussed, appear to disregard altogether the difficulty which later value-theorists found in the fact that conditions of production vary between competitors, entailing more labour and other costs for some than for others in the production of goods of equal utility.

This omission, however, may be explained by reference to the structure of the mediaeval economic system—for the pursuit of learning was closely bound up, in the Scholastic period, with general urban life. The economic prosperity of the towns was primarily due to the productive activity of the citizens, organized in gilds; and

the chief purpose of the gilds was to secure the greatest possible uniformity in conditions of production, with a view to preventing unfair competition. They enforced rules regulating the nature of the tools to be used, the length of the working day, and every detail of the productive process. Equality of wages was ensured by fixed rates. Prices paid for raw materials were equalized for all members: if one was offered material at a particularly low price, he was bound to allow the others to share in the purchase. Even natural differences of individual skill were largely eliminated, for the finished product was subject to the inspection of the gild officials, who permitted nothing to reach the market which did not satisfy the established standards of workmanship. The result of these measures of regulation was to introduce a high degree of uniformity in the labour and other costs of production of the members of each gild.

The question whether, and if so how far, the labour involved in *trade* or *commerce* should be taken into account in the calculation of the just price, gave rise to controversy. Most of the Fathers had answered this question in the negative, excluding trade from the number of occupations pleasing to God. But the unmistakable advance of civilization which marked the thirteenth century gradually forced Scholasticism to revise its attitude towards the commercial motive of profit to which, in a large measure, the towns owed their prosperity. The casuistry in which the Schoolmen's treatment of this subject abounded may be left aside for the present, and attention devoted to the principle, which now received their partial recognition and was

destined to remain for the future, that the just price of an object includes remuneration for the purely commercial activity involved in placing it on the market.

Here, too, the elaboration of Scholastic theory was simplified by the fact that differences between different undertakings were still relatively unimportant. The area in which trade could be carried on was still very small. Most of the goods in ordinary popular demand were sold directly by the producer to the consumer, without the mediation of a merchant. Trade was limited mainly to conveying specially valuable products from one region or town to another, where there was a market for them. Such trade could be conducted only in virtue of privileges of various kinds, and these were usually granted not to individuals but to whole towns or gilds. Merchants belonging to the same gild effected their transport, in the case of long and dangerous journeys, by means of common trading caravans, sharing, in the main, the same cares, costs, and dangers; and at the end of the journey they found common accommodation and enjoyed (under their joint privilege) equal marketing conditions.

Finally, as regards *agriculture*, it was impossible—and still is—to speak of equality of labour and other costs as in the case of production and trade. In view of the difficulty, or even impossibility, of calculating agricultural production costs exactly, the problem of covering them must always be handled with the aid of approximate estimates. But a rough equality was relatively easily obtained during the period under consideration, as methods of cultivation within a single marketing area were always on practically the same primitive level,

while competition between several producing areas in the same market was prevented almost entirely by poor transport conditions.

Price regulation in the Middle Ages was always the function of the authorities. In the towns, in which business was concentrated, the competent authority was either the gild or a person or body under its influence. The economic policy followed consisted in guaranteeing the gild members a fair livelihood. To this end prices were fixed at levels at which they covered the producer's labour and other costs and left him a profit, it being assumed that every undertaking, operating on a certain minimum scale, should bring in enough to meet its own costs and support the master and his family. This price policy was in entire harmony with the requirements of justice, as conceived by the representatives of the Church. The writings of the Scholastics concerning the nature of the *justum pretium*, in fact, were not confined within the walls of mere academic theory, but formed and governed current economic practice.

Long after the close of the Scholastic period, the basic principles of the Schoolmen's theory of value remained alive and active in both the speculative and the practical fields. The movement of the Reformation took up the ideal of a *justitia pretii* as they had formulated it. Especially among the leaders of the Reformation in Germany—with Luther, in particular—the acceptance of the Schoolmen's basic ethical principles relating to this question, and (in the main) of their analysis of the actual economic system, led to affirmations regarding value in exchange which resembled those of Scholasticism.

Even the gradual transfer of the sciences from clerical to lay hands, which began at the end of the Middle Ages, and the increasingly worldly spirit in which their study was pursued, did not seriously affect these fundamental conceptions. In the lay world the Scholastic influence was indeed forced back considerably by the rise of Humanism, which through its attention to classical times resuscitated the natural law of the ancient philosophers, and in particular the teachings of the Stoics. Further, the intellectual leadership of the laity was resumed, as in the classical period of Rome, by the lawyers. But even Pufendorf, the great German lawyer, who wrote in the second half of the seventeenth century and whose views upon value in exchange and the just price commanded very high respect for a long time, defined the nature of the *justum pretium* exactly after the manner of the Scholastics. He taught that labour and other costs were the factors by which value was determined and the basis on which the just price rested, and that temporary fluctuations of market prices were merely the consequence of variations in supply and demand. But he differed from the Schoolmen, in this connection, in one important respect: the obviously greater development and importance of trade in his time led him to assign to the term "costs" a very much wider connotation than that allowed by Scholasticism; in particular, he included a premium for risk, arguing that trade must yield enough to preserve the merchant from indigence since every lawful occupation should suffice to support those engaging in it.

On the other hand, it was regarded as self-evident, now

that class distinctions were accepted and justified, that the distribution of income, while conforming to the dictates of justice, should also take account of differences of rank.[1] Even the Scholastic Heinrich von Langenstein, who died in 1397, had taught that the authorities, in fixing fair prices, should estimate how much the individuals concerned needed in order to maintain their status. Pufendorf's contemporary, Caspar Manz, Professor at the University of Ingolstadt, also held this view, and carried his argument to its logical conclusion in a way which causes amusement to the modern reader.[2] Such views found frequent expression in the legal developments of the period, and particularly in the manner in which taxes and duties were imposed.

The idea that a natural price, proportionate to normal production costs, could come into being automatically in economic life, was far from the minds of Pufendorf and his age. He assigned to the authorities the right and the duty of regulating prices according to his principles, and

[1] See above, p. 17.

[2] In his book on the law of debt Manz upholds, when discussing the question of the allowance to be left to the insolvent debtor, that the consideration given him should depend on his rank and position: the nobility should (*debent*) have more choice and delicate food and drink than other persons, and a high-born bankrupt, if his creditor is wealthy, should be left whatever he requires in order to live in the splendour proper to his status; a doctor of learning should likewise be entitled to a level of well-being "*pro statu et dignitate*"; and so on down the scale to the peasant, who "has no right to live on white bread, poultry, and other such good things," but must be satisfied with black bread, cheese, onions, and beans. (*Patrocinium debitorum calimitate belli depauperatorum*, Dec. III. qu. 3 § II ff., second edition, Nürnberg, 1640, pp. 78 ff.) See also his remarks in *loc. cit.* Dec. I. qu. 8 § 65, on the remuneration of personal services according to the class of the servant.

the conviction with which he did so was the greater for the fact that he systematically and energetically advocated the principle of State omnipotence in every sphere, thus laying the theoretic foundation of the mercantile policy which was to follow in the period of State absolutism.

Pufendorf was the most eminent professor of constitutional law of his time. His influence was not limited to Germany; in France, in particular, his teachings found many eminent adherents and commentators, for the conception of the omnipotent State was useful, and therefore welcome, to French absolutism. But because the French absolutists, in the midst of the disgraceful economic disorganization of their country, identified the State with the Crown, the hatred with which the monarchy gradually surrounded itself was directed not only against the person of the king but also against the principle of State omnipotence.

3

The Enlightenment; the Influence of the Natural Sciences; Laissez-Faire; *the Triumph of Materialism in the Theory of Value*

Political and cultural conditions in eighteenth-century France constituted the fertile soil in which the idea grew and ripened, that the doctrine of natural law, hitherto restricted mainly to the theoretic sphere, should be examined seriously with a view to its practical applica-

tion, and that what this "enlightened" period regarded as natural human rights should be fought for and won. Voltaire's mockery dissolved respect for tradition and strengthened the individual's consciousness of his own personality. The conviction gained ground that if only the individual could be freed from his bonds a golden age would begin for all humanity.

In the economic field, the reaction following upon the failure of the excessive political intervention of mercantilism had thrown up the idea that were it not for the presumptuous interference of the State, which claimed to understand everything better than the persons directly concerned, men would themselves find the right way to the common good. Individual freedom was claimed in the name of natural law, as a natural human right, and the grant of this claim was expected to result in the emergence of a society governed by reason alone, imposed of itself with the force of a law of nature. In such a society, it was believed, the supremacy of reason would guarantee the "natural" evolution of human affairs.

The coming of this new spirit, which involved an important modification of the ancient doctrine of natural law, was due in part to yet another cause, namely the greater degree of independence attained by the natural sciences and their methods of enquiry. The pioneer here had been Francis Bacon of Verulam (1561–1626), who had set out, in conscious opposition to Scholasticism, to reconstruct all the sciences from their foundations according to the methods of enquiry used in the natural sciences. He took up his task, of course, in the belief that all, including political and the social sciences, assumed

the existence of certain laws inherent in the nature of things, the discovery of which constituted their sole purpose. This belief lent a more positive content to the idea of natural law as applied to human society. It opened the way for the conception that all objects harbour some natural power, whose action in human society is analogous to that of the laws of nature in the external world; or, in other words, that the ideals of natural law tend to translate themselves, in virtue of a kind of inner necessity, into reality. And herewith the "labour theory of value," as it is called today, entered a new phase of its evolution.

The doctrine of value was modified, during the eighteenth century, by a number of writers, and particularly by the French school of Physiocrats. These economists were the first to propagate the doctrine of *laissez-faire*, as a logical implication of natural law, in the political sphere. They had, indeed, no uniform programme with regard to the economic liberty which they proclaimed as the indispensable condition of the establishment of right price-levels in the economic system. They demanded free competition in industry and trade, but held that in agriculture the State must intervene with artificial measures if prices were to be kept at the proper level. This difference in the methods prescribed for the realization of the true value of the products derived from different productive sources was due to the Physiocrats' peculiar belief that new values could be created only by Nature herself, acting primarily through agriculture. They held that a *produit net*, a real surplus of produce over and above the amount needed to replace exhausted

goods, could be obtained by the farmer, and by him alone. This surplus, they said, went to the landowner, who distributed it among the rest of society through his purchases and other transactions; in the final analysis, therefore, the whole population of a country lived upon agriculture, so that the common interest demanded that agricultural production should be guaranteed a constantly high rate of remuneration. Industry and trade, on the other hand, were "sterile" occupations, since instead of increasing the national wealth they merely transformed and transported existing materials; here, accordingly, but here only, economic forces should be allowed free play in order that undesirable profit-making might be prevented.

The theory of value founded on natural law passed into its next stage in England. In 1689 John Locke published a justification of private property based on the principles of natural law, in virtue of which, he said, every man has a natural right to the product of his own labour. He proclaimed, at the same time, that human labour was by far the most important factor in the creation of value, careful analysis revealing that its share in this process represented ninety-nine per cent of the whole, as against nature's contribution of only one per cent. The logical conclusion of this line of thought was that an exchange of goods conforms to the requirements of natural law only if equal amounts of labour have been involved in the production of the commodities exchanged. Thus Locke's philosophy of natural law also led to the conception of a just price which coincided, though reached by a different approach, with that of the

Scholastics—a just price that is, representing the agreement of the value in exchange with labour value.

Although Locke himself did not pursue the argument further, his influence on his successors is evident. Of these the most famous, though by no means the earliest, was Adam Smith, whose *Wealth of Nations* (1776) overshadowed, as a result of the rigorous logic of its economic reasoning, all the other economic writings of the period.

Like John Locke, the "father of modern economics" constructed, in the traditional *a priori* fashion, a supposed original state of things in which mankind had lived according to the law of nature. He started from certain instincts of which he supposed the nature of the normal human being to be made up, and from whose action he deduced the character of the economic life of prehistoric communities. First among these instincts he placed the urge felt by every man to improve his lot, and his "natural propensity" to barter and exchange with other men. These two instincts in combination would, he said, lead everyone, if left to follow his natural inclinations, to value goods offered in exchange according to the labour involved in their production. It was inconceivable that the primitive man, following his reason in the full freedom of natural law, should, in striking a bargain, do otherwise than see to it that the commodity to be received represented at least as much labour as the commodity to be given in exchange for it.

This natural principle, Adam Smith held, would inevitably find application at the existing level of economic development, if men were left free to follow exclusively their reason and their healthy egoism, and seek

their livelihood in the branch of production offering the greatest gain. In such a state of freedom the inner law which should determine the value of goods would be able to operate. For if the supply of any commodity were to fall behind effective demand, some of the persons demanding it would be prepared to pay more for it than others; competition would result in a rise in its price; this would lead to the application of more labour, capital, or land to the production of the commodity, and supply would increase until it satisfied demand. At this point prices would fall again, since if supply exceeded demand the opposite process would set in. An economic system in which the market was left, in accordance with natural law, to the free play of competing forces, would automatically make prices tend constantly towards an average which would provide a moderate remuneration for each of the factors represented in it—labour, capital, and land.

This average price was for Adam Smith the "natural" price: from the philosophic point of view, it corresponded to the idea of justice because it was deduced from the principles of natural law, while from the economic point of view it was the ideal because it assured all engaged in production, through their labour, capital, or land, an ordinary or average gain.

In practice, Adam Smith's "natural price" is identical with the *justum pretium* of Scholasticism. But its theoretic basis is entirely different, and there is a corresponding difference in the method prescribed for its attainment. The Scholastics taught that the strong should not exploit the weak, for whose protection they invoked the strong

arm of authority. The new version of the law of nature, however, not only allowed but enjoined upon men to pursue their own material advantage as far as they could, and quite logically favoured individual economic freedom and opposed all State intervention as a hindrance to the exercise of the acquisitive instinct. Adam Smith, more consistent than the Physiocrats, advocated complete freedom from official intervention for *all* branches of the economic system, including agriculture. There was no counterpart, in the industrialized England of his time, to the forces which in France had led to industry and trade's being ranked lower than agriculture. The doctrine of *laissez-faire* could therefore—and must—be formulated as an all-inclusive system of natural economy applying to the production of raw materials as to every other economic activity.

Adam Smith regarded his book on the "wealth of nations" as a contribution to the philosophy of natural law. His whole theory of prices corresponding to the value of the object, and hence right and just, and the economic system by which he proposed to ensure the practical establishment of such prices, do really form an integral part of this philosophy. But although the economic system which he worked out was logical and generous in its main features, his theory of value was formulated in several different, and sometimes contradictory, ways, capital and land being represented in some passages as embodiments of labour, and in others as factors of a special kind which *together with labour* constitute the value of the product. This theory was not made fully consistent until Ricardo, who built further

upon it, defined all capital, including cultivable land, as stored-up labour—a notion which was regarded as bringing the objective theory of value into complete harmony with prevalent economic practice. Ricardo openly claimed that his teachings constituted the basis of the whole doctrine of free trade.

It had generally been considered sufficient, in the past, to define the amount of labour to be taken as determining value simply as the amount "normally" required for production. Ricardo, however, laid down the principle that the value of a commodity was determined by the amount of labour required for its production *under the least favourable conditions* under which production must be carried on in order to meet demand. The price which corresponds to the labour required under these conditions is for Ricardo the natural price, about which the actual market price oscillates. Variations in market prices, which are due to the changing ratio between available goods and the demand for them, entail corresponding variations in profits on capital. If these variations lead to higher profits in any particular branch of activity, capital is withdrawn from the less profitable branches and invested in it, until the intensified competition in the one branch and the lessened competition in the others result in the equalization of profits. This process is identical with that by which, under free competition, the market prices of goods tend to approximate to natural prices.

Ricardo makes a distinction between profit on capital and surplus income due to the enjoyment of more favourable conditions of production than those under

which competing producers are working. This surplus, which he calls "rent," is not among the factors by which price is determined, but is a consequence of the prevailing price-level, benefiting only the producers who are specially favoured with regard to conditions of production. It does not perform the useful economic function of profit, which equalizes the distribution of capital among the different branches of activity, and thus maintains a constant tendency towards natural prices—that is, prices corresponding to true value. Whereas, therefore, profit on capital is economically justifiable and even necessary, since it is a natural element in the just price, the opposite is true of rent.

The special importance of this theory of rent lay in its application to agricultural production. The value of the products of the soil is determined, according to Ricardo, like that of all other goods, by the amount of labour required for their production under the least favourable conditions enjoyed by any unit whose output is needed in order to meet demand: it therefore depends upon the condition of the worst land that has to be cultivated. No rent is yielded by this land, but only by the better areas, in virtue of their natural advantages. If the prices of farm produce rise, farmers proceed to cultivate worse land, production from which requires even more labour than that needed on what was previously the poorest land under cultivation. The interests of the landowners conflict with those of the rest of society, because they call for higher rents, which involve the continual extension of cultivation to poorer and poorer land, and hence the forcing up of grain prices to unnaturally high

levels. What the Physiocrat Quesnay had said of the trading class, Ricardo now said of the landowning class (meaning particularly the great landed proprietors)—that its interests were opposed to the general good of society. His teaching on this point gave rise to a campaign against the corn laws, which were regarded as promoting an unjust upward tendency of prices.

In Adam Smith's day, the doctrine of free trade had already made a triumphal entry into the field of practical politics. Ricardo, who advocated the same doctrine in a more radical form, lived and wrote in a period characterized by an immense process of industrialization, which was due to this liberal economic policy. A large number of laws, by means of which the State had tried artificially to regulate economic activity in the name of the just price, but which had long ago come to be regarded as outlived and oppressive, were already repealed. A large measure of freedom, both for men and for capital, had been attained.

The "classical" school of economics, which was the leading school of the period, stood in diametrical opposition to the view that had held sway since the time of the Scholastics. In this view, which had retained its influence even during the mercantile period, it was regarded as self-evident that one of the most important and essential functions of authority was actively to regulate economic life with a view to assuring to every subject the minimum livelihood to which God and his rights entitled him. The disappearance of this opinion with regard to the duties of government meant, in terms of the theory of value, the disappearance of the idea that there is a relation

between the value of a product and the total income of the producer who wishes to realize this value. It was indeed recognized that the cost of a commodity, by which its natural price was determined, should include a moderate profit for the seller. But the *laissez-faire* economists were thinking here only of the profit earned on each article. They did not for a moment think of asking whether a man's total profits were sufficient to keep him alive or enable him to live as befitted his rank in society. Interest in the individual gave place to the conviction that the general interest required the greatest possible elbow-room for all (*ôte-toi que je m'y mette!*). The power of goods to represent value was no longer considered in relation to persons whose income was derived from the prices obtained for them in exchange; value was now regarded as a function or intrinsic property of the goods themselves, or as a mysterious force originating in them and radiating from them. The triumph of this "objective" view was the triumph of materialism in the field of the economic theory of value.

4

The Reaction of the Sense of Justice; the Socialists; the Papal Encyclicals

The darker aspects of the new economic policy gradually claimed the attention of the public. They did so most insistently in the countries in which the policy had found the most complete application—and particularly, there-

fore, in England. The worst feature of all was the terrible decline in the standard of living of the workers. Wherever the principle of *laissez-faire* had been applied thoroughly, the only limit set to the ruthless exploitation of labour—even the labour of women, young persons, and small children—was that of physical impossibility. Conditions had grown up (particularly in factories and mines) whose inhumanity recalls that of the harshest forms of primitive slavery.

Laissez-faire economics sought to explain away these conditions by reference to the necessities of nature. A kind of fatalism seemed to pervade the whole subject. Ricardo argued, on the basis of his general theory of value, that the forces of supply and demand which determined the market price of labour, were constantly counteracted (as in the determination of the market prices of goods) by a tendency towards the establishment of a "natural" price. The natural price of labour was determined by its necessary cost of production, that is, by the expense involved on the one hand in the maintenance of the worker at the usual standard of living of workers in his country, and on the other in the reproduction of the population at a rate sufficient to maintain it at a constant level. Lassalle later named this principle "the terrible iron law of wages." He pointed out that in the long run the decline of wages below the minimum so determined could be prevented only by the decimation of the working class, through hunger and distress, to a point at which the shrinkage in the supply of labour would cause wages to rise again; on the other hand, wages could never remain for any length of time above the level of

the natural price of labour, for the improvement of the workers' condition would lead to more rapid procreation, and hence to an increase in the supply of labour and a new decline in its remuneration. This doctrine seemed to be confirmed only too well by the progressive impoverishment of the workers which accompanied the evolution of industry, particularly in England. It became increasingly clear that completely free competition made the economically weak the defenceless victims of the strong.

The writers who took up the workers' cause and began to attack the existing system started from the same basic principle as the *laissez-faire* economists. But they arrived at very different conclusions. Their ideals, like those of their opponents, were conceived as belonging to the realm of natural law; but their central teaching was that every man had a natural right to the produce of his own labour. In the name of this belief they attacked the prevalent distribution of goods, by which, they said, the workers were deprived of the fruit of their industry by the owners of capital. And they found in Ricardo's doctrine a weapon perfectly suited to their purpose. Ricardo had taught that all economic value was the product of human labour, and that capital contributed to the production of such value only because it was a form of stored labour. Further, it was possible to prove, by means of Ricardo's labour theory of value, that there is a necessary and irreconcilable opposition between the interests of the wage-earners and the capitalists. For if the true value of a commodity is determined exclusively by the amount of labour required for its production, its

price may be regarded as a fixed total which includes the wages of labour and profit on capital and in which, if one of these elements increases, the other must diminish. If profits are increased, wages must decline, and *vice versa*. The Ricardian theory thus supported the contention of the socialist revolutionaries, that the advantages which the capitalists sought for themselves could be secured to them only through the exploitation of the workers, and that efforts to improve the lot of the working class inevitably involved the waging of a "class war" against the capitalists.

Ricardo's whole teaching was based on the assumption that the "natural" principle, according to which the circulation of goods should be regulated by their labour value, would necessarily lead, if allowed to operate under conditions of "natural" freedom, to a beneficent economic order. The socialists, on the other hand, beginning from the same labour theory of value, arrived at the conclusion that the terrible exploitation of labour by capital, evident to every objective observer, was the necessary result of an economic policy based upon the *laissez-faire* principle, and that only vigorous State intervention could be expected to remedy the situation. The idea of an irresistible law of nature was thus dropped again by the social writers on value, and the ethical element present in the earlier objective theories reappeared in the foreground.

It was along these lines that the socialist writers advocated the labour theory of value during the first half of the nineteenth century. The most outspoken of them were Englishmen, for whereas on the Continent the

problem of working-class poverty was still in its initial stage, the rapid development of large-scale industry in England had there raised it in the acute form in which it is known today. Most of the principal continental socialists did, indeed, take up their stand upon this theory; but their intellectual leaders—Sismondi in France and Rodbertus in Germany, for instance—interpreted it and built upon it with more moderation than their English colleagues.

The labour theory of value underwent its next modification at the hands of Karl Marx. In his main work, *Das Kapital* (1867), Marx, who was a pupil of Hegel, did not set out from the customary historical—or rather quasi-historical—picture of an ideal state of nature, but approached the whole problem primarily along the lines of pure logic, using his master's dialectical method. As his starting-point he took the Aristotelian dictum upon which all the objective theories had been based, and which, despite its author's intention that it should be interpreted *cum grano salis*, had gradually come to be accepted as absolutely true: that the fact of exchange proves the existence of something common to the things exchanged which makes equivalence between them possible.[1]

The conclusion at which Marx arrived was that "the value of an article of utility is determined by the amount of socially necessary labour applied to its production." By "socially necessary" labour he meant the labour required "for the production of an article of utility under the normal conditions of production, and by means of

[1] See above, pp. 36, 37.

work of average skill and intensity, for the society in question." The ratio between the value of two commodities was thus equal to the ratio between the socially necessary labour applied to the production of each.

In the pre-capitalist era, Marx contended, goods were exchanged according to this, their true value, which was still the determining factor wherever the capitalist system had not arisen to deprive the workers of the means of production. In the capitalist world, however, the operation of the law of value was hampered because the means of production had passed out of the hands of the workers. The capitalist produced goods whose exchange value was obviously higher than that of the means of production and the labour which he had purchased and brought together in order to produce them.

Marx found the explanation of this phenomenon in what he regarded as the unique character of labour. Labour's exchange value, he said (applying the labour theory of value), was determined by the amount of socially necessary working time required for the production of the food essential to the worker's subsistence. Its value in use, however, arose from its ability to produce values higher than its own. The means of production —buildings, machinery, raw and other materials—added no more than their own value to that of the product, and were therefore "constant" capital. Labour, on the other hand, could enhance the value of the product by more than its own value. If, for instance, the value (in exchange) of a given amount of labour-power was six working hours, the worker who performed twelve hours' work

furnished "additional" labour, and therewith "surplus value"—i.e. value in excess of that of his own labour-power. Owing to this property of labour, capital invested in labour-power was "variable" capital.

The expense incurred by the capitalist in producing a commodity, that is, the "cost price" of a commodity, thus consisted, according to Marx, of the constant and variable capital applied to its production. Its market price, however, included not only its cost price, but also the surplus value created in its production. This surplus value was appropriated by the capitalist as a consequence of the legal structure of the capitalist economy, but such appropriation was unnatural, and should be combated. The weapon with which the battle should be waged was communism. When communism had won, and natural conditions been restored, the law of labour value, which Marx repeatedly described as a law of nature, would necessarily come into full operation again. The remuneration paid for every commodity and service exchanged would then correspond to the requirements of social justice.

The Marxian theory of value may be regarded as the last of those which derived the exchange value of a commodity from the costs—however defined—involved in its production, and accordingly explained equality of value between two commodities as equality in the cost which they represented. A common feature of all these objective theories is that they dealt simultaneously and indiscriminately with the processes which in fact determine prices, on the one hand, and with the supposed requirements of an ideal law of justice, on the other,

The necessity of such treatment is inherent in the objective approach to the value problem. For if it is believed that all the factors regulating value in exchange are to be found in the objective field, and at the same time that value in exchange can be measured, it is logical to regard as the loser the party to an exchange who receives a counterpart of less objective value than the goods or services which he supplies. And from this position the enquirer is compelled, by the very nature of the problem, to leave the study of the actual processes of price determination and submit his findings to the test of justice. This necessary connection between the two aspects of the problem is equally operative whether the desire for justice is the emotional starting-point of the enquiry into actual conditions (as was primarily the case with the Scholastics),[1] or whether, on the contrary (as with the more recent secular philosophers and economists), the chief purpose is to understand the facts of economic life.

A further logical connection exists, however, between the particular point of view from which actual values and prices are judged, and the particular conception of justice entertained by the person judging them. The radical labour theory of value foreshadowed by Ricardo and constructed by Marx is the counterpart of the communists' ideal reign of justice, under which the worker is to be entitled to the "full" product of his labour and an end put to the unjust participation of the capitalist.

[1] Approaching the subject from this socio-ethical angle, the Christian social writer Freiherr von Vogelsang considered that the special merit of the Scholastic doctrine of value was its objectivity.

Scholasticism, on the other hand, which admitted both labour and other costs as determinants of value in exchange, and whose guiding purpose was the establishment of a form of social justice in which conflicting interests would be *reconciled*, had to construct a different ideal system: in the just society of the Schoolmen, the worker shares the product of his labour with the capitalist who supplies the funds needed for production.

An authoritative application of this last doctrine to modern economic conditions was made in the *Encyclica Rerum Novarum* issued by Pope Leo XIII on May 15, 1891—the "*Magna Carta* and secure foundation of all Christian social work"—and Pius XI's complementary *Encyclica Quadragesimo Anno* of May 15, 1931. Both these encyclicals energetically condemn the disregard of values by economic science, and lay special emphasis on the necessity of justice in the remuneration of the workers. They reject all exclusive claims to the "full" product, on the ground that production is a process in which labour and capital co-operate. They affirm that the just determination of the wages of labour cannot be effected from any one standpoint, but requires the consideration of several different questions, namely, the vital needs of the worker and his family, the economic soundness of the undertaking employing him, and the welfare of society as a whole. Finally, they remind the public authorities that it is their task to preserve the rights of their subjects by preventing and punishing injustice, and recommend the reconstruction of the corporative system as the best means to this end.

5

Subjectivism in the Theory of Value; the Scientific Justification of Moral Value-Judgements

The conception of the normal human being was an essential element in the objective theories. For the "normal" labour and other costs which they held to determine value can be regarded as normal only in so far as they are necessary to the production of a commodity normally judged useful. The idea of such "normal" judgement presupposes a division of human needs into normal and abnormal needs, the latter being regarded as of no general importance and the former being defined as the needs of the "normal" human being.

To reject the notion of normal needs and admit, in approaching the problem of value in exchange, the existence of subjective differences in human needs, is to abandon the objective for a "subjective" theory of value. The fact that men attach varying degrees of value in use, or suitability to their particular purposes, to goods which are of equal general utility, was not overlooked by the Schoolmen. On the contrary, they referred to it frequently. But these references usually concluded with a reaffirmation of the principle that the *justum pretium* was determined solely by *indigentia communis*, or normal need, and that subjective differences (but not differences of rank)[1] were absolutely irrelevant. The austere views of the Scholastics must have caused them to regard leanings towards subjectivism as a sign of decadence.

[1] See above, p. 44.

The period of the Italian renaissance brought a profound change of outlook, a conscious and thorough rejection of the Scholastic philosophy. A wide gulf, apparent to all, had been allowed to develop between the practice of life and the traditional doctrine of absolute morality and justice. Unbridled egoism and a ruthless will to dominate characterized the spirit of the time. Machiavelli, the classical prophet of the "realistic" political wisdom in which this spirit issued, wrote in his book, *The Prince* (1532), that "a man who tried to be good in all his actions, in the face of so many who are not good, would be bound to come to grief." This remark shows how the idea of an immanent divine justice had given place to the acceptance of the plain fact of human egoism. And with human egoism, the difference of men's needs had come to the fore again—a phenomenon which, whether ethically good or bad, the philosopher, like the statesman, had to accept and comprehend.

It was therefore as a necessary consequence of this new, realistic attitude to life that subjectivism took its place among the theories of value. The first outstanding exponent of the subjective theory of value was a fellow-countryman and fellow-townsman of Machiavelli, namely, the Florentine economist Davanzati. This writer, whose most important work appeared not long after *The Prince*, based his argument on the assertion that it is impossible to follow the variations in the value of commodities and services because human needs are continually changing. Similar views began to appear in England, as that country developed into an important trading centre. Nicholas Barbon, towards the end of the

seventeenth century, drew attention to the distinction between the abstract value in use commonly attributed to goods in virtue of their technical characteristics, without reference to any particular human subject, and concrete utility, which depends upon the actual sense of need felt by the individual for different commodities. In proceeding to deny the possibility of any system of uniform laws determining the value of objects from within, Barbon did no more than pursue to its logical conclusion the view that value depends upon a subjective need which is imaginary, and hence continually changing and completely indeterminate.

The period in which the subjective theory of value developed in England was, significantly enough, one pervaded in an unusually high degree by the spirit of commercialism. The England of William III's reign was marked by growing prosperity, company-promotion and speculation, and Barbon was among the boldest gamblers of his time. For the leading business men and economists of this period success was the only thing that counted; values which could not be "realized," value in exchange which was not expressed in actual prices, meant nothing to their practical business sense, and were hence easily overlooked altogether. It is not to be wondered at that such a time and such a society should have thrown up a writer who, in opposition to the traditional doctrine, taught that the most essential feature of economic value was its variability and that the search for constant laws governing price movements was a futile one.

But although the subjectivist criticism of the accepted

view is of considerable historical interest, its influence was neither widespread nor lasting. The intellectual and emotional life of the period was far too thoroughly imbued with the ideals of a higher justice and an absolute ethic to allow a subjective teaching which disregarded these ideals to take firm root. It was not until the time of Auguste Comte's influence—the first part of the eighteenth century—that subjectivism succeeded, as its opponents had done, in elaborating a coherent and self-contained theory.

Comte gave the social sciences first place in the scientific hierarchy, but regarded mathematics as the essential instrument of all scientific enquiry. He held that the spiritual evolution of humanity fell into three phases. The first was the "theological" phase, in which men attributed every event in the external order to the action of supernatural powers; the second was the "metaphysical," in which men sought to explain such events *a priori*, by reference to abstract ideas and principles; and the third, which was the highest attainable to man, was the "positive," in which attention was directed first to the discovery of actual facts and then to their logical interpretation. Whereas the natural sciences had already reached the third, political economy was still in the second, or metaphysical, phase: the leading economists started out from unreal, abstract ideas, and never succeeded in formulating doctrines which corresponded to the real world. In order to become a true science—a *physique sociale*—economics must adopt the inductive, "positive" method prescribed for all scientific enquiry by Bacon, Descartes, and Galileo.

Comte exercised a powerful influence upon scientific method, despite the small interest aroused by the material content of his philosophy. Economics began consciously to discard the deductive methods of the writers on natural law, and to proceed more and more by induction. The lead was taken by economists with a schooling in mathematics, such as Cournot and Dupuis in France and F. B. W. Hermann in Germany. A search was begun for precise formulae to express the operation of the law of demand, or the dependence of prices upon the subjective evaluation of goods. The year 1854 witnessed the first appearance of a systematic theory of "marginal utility"; this theory, based upon mathematical principles, was put forward by a German, H. H. Gossen.

Gossen took as his starting-point the principle that the value of a commodity is determined by the amount of pleasure to which its use gives rise. The pleasure derived from the use of one and the same commodity must diminish as its use is prolonged or repeated, until complete satiety is reached. As the stock of goods of a single kind is increased, therefore, the value of each additional unit of the same size and character must diminish, and ultimately reach zero. But if all the units in the stock are of equal size and character, they must be of equal value. The value of each unit, therefore, is determined by the utility (or capacity to give pleasure) of the last unit added to the stock, that is, by what later came to be called the "marginal" utility of the commodity. The inventor of this theory attempted to formulate mathematically, and calculate with precision, this marginal utility and its influence upon value in exchange.

Gossen was a deeply religious man, and it is interesting to note that despite his strictly scientific habits of thought he felt himself impelled to test the validity of his theory of value by ascertaining whether its actual operation in human society would be just. He came to the conclusion that it would, and in doing so found himself confirming the ideal already set up by the exponents of the objective theory, differing from them only in seeing it from the angle of the consumer instead of that of the producer. He argued that everyone, in making his purchases, aimed at securing the greatest possible pleasure from them, and therefore divided his custom among the producers of different commodities in exactly the proportion in which these producers helped him to derive pleasure from life. Consequently, "the total remuneration received by each individual must correspond exactly to what he deserves for promoting the pleasure of his fellow-men." Gossen openly confessed his belief that in expounding this theory he had made a contribution to the explanation of man's social life in the world comparable to that made by Copernicus to the explanation of the relations between the planets in the universe.

Gossen's book received little attention until, about twenty years after its appearance, three writers—Jevons, an Englishman, Menger, a German, and Walras, a Frenchman—came forward almost simultaneously with solutions of the problem of value astonishingly similar to that advanced in it. It may be noted, in passing, that this occurrence offers clear evidence of the degree in which the evolution of value theories has been affected,

historically, by the intellectual and cultural atmosphere in which their protagonists lived.[1]

Jevons, a natural scientist, and Walras, a mathematician, both started out from the principle that all problems of comparative volume, and hence those relating to supply and demand, are necessarily subject to laws of a mathematical character. They constructed curves and equations to illustrate the dependence of value upon utility and the tendency of the utility of a commodity to decline proportionally to the increase in the stock of it. And in this way they sought to demonstrate objectively and comprehensively the mathematical laws by which commodity prices must inevitably be determined under conditions of free competition.

It is chiefly to Carl Menger, however, that the theory of marginal utility owes its wide reputation at the present time. The German economist rejected the mathematical method of approach, and concentrated on the psychological aspect of the problem. But he was no less confident than the natural scientist and the mathematician in the possibility of demonstrating the truth of his theory with the same conclusiveness as that of any law of natural science.

These three theorists exerted a lasting influence. Many of the best living writers on the problem of value belong to one or other of the schools which they founded—Menger's Austrian School, Walras' Lausanne School, and

[1] This is the principal theme of my book, referred to on an earlier page, on *Die Geschichtlihe Entwicklung der modernen Werttheorieen*; see, in particular, the broad outline of the evolutionary process in question given on pp. 262 ff.

the Anglo-American School, which derives its guiding principles from the work of Jevons. And these schools are still engaged untiringly in the elaboration and extension of the subjective theory of value. It is not the place here to discuss their achievements at length, for if there is one point upon which they are agreed, among their many disagreements, it is the necessity of rigorously and completely excluding from their fields of study the problem whose scientific analysis is the purpose of this book—namely the problem of the just price. Gossen had indeed attempted to find ethical confirmation of the validity of his theory of value. But the close relation of economic doctrine to moral doctrine, which resulted from its close historical connection with the classical philosophy of natural law, was bound to dissolve as the conviction gained ground that economic forces were regulated by their own inherent laws, similar to the laws governing nature. For the natural laws of modern science stand "beyond good and evil," outside the realm of the just and the unjust; their operation is not subject to moral judgement.

Many modern economists wish to exclude all questions of value—and hence, of course, that of the just price—from the scientific field, which they would limit strictly to the study and exposition of fact. This desire has been expressed most forcibly by German scholars. Max Weber[1] regarded economics as a "factual science" which should refrain absolutely from passing value-judgements

[1] See, among other writings by the same author, Weber's article on "*Die 'Objectivität' sozialwissenschaftlicher und sozialpolitischer Erkenntnis*," in the *Archiv für Sozialwissenschaft und Sozialpolitik*, vol. 19.

on the phenomena which it brought to light; and Brentano[1] formulated the summary axiom that science should concern itself only with what is, and not with what ought to be—though he qualified this by adding that it would be degrading to economic science to have to limit itself to the dismal rôle of the antique chorus, and simply accompany the drama of human life with words of retrospective wisdom.

The question may well be asked, nevertheless, whether the downright exclusion of the problem of the just price is logically or practically defensible, even from the point of view of these "realistic" economists. For the mere fact that a given price is considered—for whatever reason —to be fair or unfair, is a part of reality. Moreover, the reasons behind such judgements do actually exist, and therefore belong to the realm of "what is." Their variations in time and under different conditions may be traced historically. Their study and discussion may therefore be said to fall within the field of a science seeking to discover and interpret facts. Not only do they permit of scientific treatment; they require it.

[1] See particularly the article published by Brentano in the review *Cosmopolis*: "*Über Werturteile in der Volkswirtschaftslehre.*"

CHAPTER II

The Dependence of Value upon Law and the State

6

The Price-Struggle; the Striving for Maximum Gain

EVERY variation in the price of a commodity, irrespective of its origin, can cause variations in the prices of other commodities. A change in grain prices may affect the price of bread, the change in the price of bread affect that of meat, the change in the price of foodstuffs affect the wages of industrial workers, the change in wage rates affect costs of industrial production, changed costs affect the prices of manufactured articles, and so on *ad infinitum*, in every conceivable variation. The process resembles that which occurs when a stone is thrown into a pond or stream. Whether the water is still or in movement prior to the impact, it—or at least the part of it immediately surrounding the stone—is affected in some way by the entry of this body. How far the movement initiated by the stone extends depends not only upon the volume and weight of the stone and the velocity and direction of its flight, but also upon innumerable other circumstances by whose existence or creation this move-

ment can be stopped, retarded, diverted, reversed, or accelerated.

Economic theory has long been occupied with the question of the repercussions of price movements in one of its aspects, namely that relating to the economic effects of public levies, particularly taxes. It is an established practice, in all civilized countries, to enquire carefully into the probable effects of a tax before imposing it. But purely technical considerations of this kind are quite inseparable from considerations as to the *justice* of the imposition in question. The problem of justice is, indeed, the central issue in all discussions concerning taxation. Intense controversy rages over the principles of just taxation, but none whatever over the question whether the State can and should aim at justice in framing its fiscal policy.

The problem of the repercussions of price movements cannot be ignored in any attempt at just taxation. For a person on whom a tax is imposed can always—and often does—add the amount for which he is liable to the price of the goods which he sells, for instance, thus passing on the tax to the purchasers. Whenever this is done it is not the "tax-payer," but his client or customer, who pays the tax; the tax-payer pays what is due to the exchequer, but only on behalf of this other person, who refunds him, as it were, the sum paid. The taxable capacity of the other person, however, may be quite different from that of the tax-payer. Further, he may be in a position to hand on the tax (or part of it) to a third person, and the third to a fourth, the fourth to a fifth, and so on. The process by which taxes are thus passed on is an extremely

complicated one. Very often the legislator, in imposing a tax, can forecast only its immediate effects, the innumerable more remote repercussions being beyond calculation. It is often quite impossible to trace the final incidence of a tax, or to ascertain what portions of it are in fact borne by the different parties over whom it is spread.

The taxation of beer offers a particularly striking illustration of this process.[1] In all countries in which beer is taxed, the duty is levied on the brewer (whether assessed on the basis of the raw materials, the machinery, the wort, or the manufacturing process used). The brewer, however, is a business man, who naturally tries to obtain a price for his beer which will cover all his costs, including taxation, and leave him a profit. If he succeeds in doing so, the beer tax is in fact paid not by him but by his customers—as intended, generally, by the legislator; it is not the brewer's taxable capacity that is drawn upon, but

[1] The passing on of beer duties in a special case has been made the object of a particularly careful and unbiassed study in Georg Schanz's "*Zur Frage der Überwälzung indirecter Verbrauchssteuern auf Grund des bayerischen Malzaufschlags*," in Schmoller's *Jahrbüchern für Gesetzgebung, Verwaltung, und Volkswirtschaft im Deutschen Reich*, 1882, pp. 563 ff. The results of the enquiry (which was later carried a stage further by Schanz and Struve) are summed up in the following passage: "Our purpose was . . . to ascertain as precisely as possible the actual effects of a tax on consumption. . . . It certainly cannot be said that the operation of these taxes (on beer) is simple and straightforward. The various methods by which they can be passed on—the lowering of the quality of the beer, rationalization, large-scale production and the elimination of the smaller and weaker undertakings, the curtailment of brewers' and retailers' profits, and the raising of prices—are all actually practised; it is not impossible that every tax on beer promotes all these tendencies simultaneously in some measure."

that of the purchasers of his beer. He may not succeed, however, or may succeed only in part, in shifting the tax in this way. This depends on many different factors, of which one is his business ability, but the most important is the strength of the economic forces involved.

If there is keen competition between the brewers, their customers—and particularly the independent publicans—may be able to resist their attempts to pass on the tax by threatening to cancel their supply contracts. In such a case, however, it does not follow by any means that all the brewers will be saddled with the tax in the same degree. For a brewery whose technical equipment is not quite up to date, or a small brewery which is already having to work harder than the large-scale undertakings in order to compensate the disadvantage of its limited size, may find its production costs so increased by the burden of the tax that it can only just continue to compete. Some breweries, indeed, may be forced out of the field altogether, leaving a larger market for their competitors, to help them to meet the extra charge of the tax.

If, on the other hand, the breweries have concluded agreements to eliminate price-cutting, the possibility of passing on taxation will depend mainly on whether their customers, and primarily the publicans, are sufficiently organized to oppose their combined strength. It has been proved, on several occasions, that joint action by the publicans, or even by the public, can wholly or partly ward off a tax which brewers are trying to pass on. Increases in beer taxes have sometimes led to the conclusion of agreements between the brewers, the publicans, and the public (represented by the workers' organiza-

tions), for the division of the burden between these three groups; in such cases the size of the share taken by each depends upon a variety of circumstances.

The result of a tax on beer may be to encourage brewers to leave their prices unchanged and reduce their costs of production, with a view to meeting the taxation charges out of the savings thus effected. If they economize by reducing wages, the tax is passed on to their workers, and hence affects all those whose business depends upon the purchasing-power of these workers—small traders, landlords, and so on. They may, however, succeed in so reducing production costs by the introduction of technical improvements in their undertakings that the amount of the tax is saved by this means alone, neither they nor their customers being adversely affected in any way. In this case, they may be said to have absorbed the tax.

Finally, the interaction of the various economic forces at work may cause the brewer to react to the increase in the beer tax by raising his prices by more than enough to cover his new taxation charges. When this policy succeeds, the tax constitutes not a burden but a direct source of profit.

Obviously, the various processes just described contain almost unlimited possibilities of extension. For with every person affected by the tax, however indirectly, the question arises whether, and if so in what measure, the burden really remains on his shoulders. The relative strength of the contending forces, which is influenced by so many circumstances—including purely personal factors—varies so widely that the same initial process may end quite

differently at different times and under different conditions.

If stress has been laid on the importance of power in economic life, this must not be taken to mean that humanity is nothing but an aggregate of profit-seekers intent on deriving the greatest possible advantages from the use of their individual powers. Although this view of human nature has been preached ever since classical times, it is by no means wholly true.

Even where the striving for individual gain is not checked by any law or other repressive force, it cannot be regarded as a characteristic or dominant feature of society. If a statistical survey of man's psychological attitude to the question of gain could be made, it would probably reveal, indeed, an almost universal desire for personal advantage; but it would certainly reveal also that the desire for the *greatest possible gain*—that is, more or less insatiable acquisitiveness—is not common at all. This is clearly shown, moreover, by the well-known fact that many people, in choosing a vocation, prefer a "safe" job with a fixed salary, and if possible, pension rights, to an independent position offering the possibility of a higher income. And the character reflected in this preference is not usually marked by that inner restlessness which is the almost indispensable condition of a life lived constantly and exclusively with the purpose of maximum gain.

Nor is the trading class—generally regarded as the very embodiment of the profit-motive—so fantastically acquisitive as this view would imply. There are very many traders indeed whose business enterprise is utterly in-

sufficient to enable them fully to exploit the possibilities of gain which present themselves. They attempt no more than to carry on at the level of existence which is customary for people of their standing; they take the line of least resistance; they cannot be persuaded—or only with the greatest difficulty—to effect the changes in their establishments and their habits that are called for by changing conditions. And this applies by no means exclusively to the small traders, who are personally the least important representatives of their profession. It applies also to the great industrialists. Indeed, the picture of the "captain of industry" in the highest sense of the term is incomplete if it contains no element of moderation or social conscience.

The very existence of laws which check the individual in his struggle for the greatest possible gain is evidence that individual desire for gain is neither universal nor predominant in human society. It is true, of course, that the special forms of profit-making which are combated by such legislation could not have grown up except in the soil of very widespread profit-seeking. But the history of the legislation in question shows that the party of those who desire to limit legislative interference, in the name of the classical doctrine that the striving for maximum individual gain is the natural basis of economic life, has always been opposed by a powerful group of persons who are honestly incapable of understanding or approving this view. The difference of intellectual attitude which separates these two groups is closely analogous to that which divides the opponents in the conflict over the *justitia pretii*. For anyone who believes that nature has

planted in the human species an insatiable urge to individual gain must regard every kind of governmental restriction of this urge as a violation of natural human rights.

7

The Passing On of Taxation and Other Costs; the Fiction of Market Value

There is no essential difference between the passing on of taxes and the passing on of any other costs. A business undertaking budgets its tax charges in exactly the same way—whether it be among overhead charges or in the cost of production of a given unit of goods—as any other item of general or special expenditure. An increase in total costs has the same effect on the price at which the product must be sold, the sum available for wages, the contracts given to suppliers, and so on, whether it is due to higher taxation, higher prices of raw materials or machinery, higher wages secured by pressure from the workers, higher rates on mortgage or other loans, higher rent charges, or any other such factor. The producer may be able to cover his increased costs (wholly or in part) by a corresponding or greater increase in the selling price of the product, and thus pass them on to the consumer. When this measure is impossible, he may be able to compel his supplier to deliver his materials at a lower price by threatening to transfer his custom to a cheaper rival. Or he may succeed in making his staff accept a reduction of wages in order to keep the undertaking

alive. There are innumerable other methods and combinations of methods that may be used, and are used in the everyday business world. But however this economic struggle between competing forces is conducted, and whatever its final outcome, the question whether the increase in production costs is caused by an item in the undertaking's taxation account or by some other item is an internal question for the undertaking concerned, and hardly affects the processes which have just been described. The problem of the passing on of taxes, therefore, must be regarded as part of the more general problem of the passing on of costs of all kinds.

But the question then arises whether the passing on of costs can be treated as an independent problem, or whether it must not rather be approached in the light of a general theory defining the ultimate determinants of all costs and prices of every sort.[1]

Are there prices which can be explained without reference to other prices? Are there such things as *primary prices*, upon which all others are founded but which are themselves entirely self-determined?

Let us suppose that an absolutely new commodity suddenly appeared from nowhere and took its place in the economic life of the world. Suppose, for instance, that a meteoric shower were to cast on to the Earth a substance previously unknown to its inhabitants and offering quite unprecedented possibilities of utilization for human purposes. It is quite inconceivable that this substance should bring with it, into the world's economic

[1] O. Morgenstern uses the expression, "the birth of prices" (*Schriften des Vereins für Sozialpolitik*, 1931, vol. 183/1, p. 18).

system, a price determined otherwise than by the prevailing prices of goods already on the market. At the very least, an upper limit would be set to its price by the purchasing power of the consumers, which is limited by the combined action of existing prices, wages, etc. Only if the new commodity were so plentiful and generally distributed as to be immediately available to all, like air, could its price be independent of other prices; but in this case it would be excluded, like air, from the field of economic exchange.

There is no price whose level is not determined by that of other prices. The price of a given commodity can never be examined in isolation; it must always be considered in relation to those of other commodities, from which it can be computed and with which it must be compared.

This interdependence of all prices means that no complete or final explanation of actual price-levels can be found. To seek the first cause in this sphere, as in every other, is to look for the last link in an endless chain or try to measure an infinite line. The ultimate ground of all price is a *Fata Morgana*, who recedes as she is approached. To admit ignorance here is to do no harm to the good name of science. Those, in particular, who would rank economics with the natural sciences should not forget that these sciences have often to confess an *ignorabimus*, and do so without shame. Why should economic science pretend to omniscience?

Equally fictitious with the notion of a single ground of all price is that of so-called "market" value, which is being treated in present-day theory as though it were a

reality, and for which its sponsors claim the virtue of "actuality" as contrasted with the mere desirability of the *justum pretium*. The commodities, real estate, and securities entered in a balance-sheet at their market value (or official stock exchange value) usually possess this value only so long as no attempt is made to realize any considerable part of it. The unreality of such value immediately becomes obvious if all or a substantial proportion of the owners of the objects in question try simultaneously to sell them, or even if a single person tries to dispose of a relatively large amount of property at the same time. The moment such action is taken the "market" value is seen to exist only on paper, and to have no basis in reality.

It must be added, in passing, that the fiction here condemned from the theoretic standpoint is absolutely indispensable in law and in economic life. It is the necessary basis of every valuation of property. Without it no statement could be balanced, no clear accounts kept. If it were not already in common use, the revenue authorities would invent it in order to provide themselves with a practical basis for the assessment of taxes.

8

The Legal Implications of the Idea of Value

There is usually an unmistakable difference in the reactions of the public to the passing on of costs in general, on the one hand, and of taxes on the other. Every increase

of a tax, however small, is in normal times made the subject of the keenest discussion and regarded, in view of its (real or supposed) effect of forcing up prices and the cost of living, with the utmost gravity. For everyone knows that a law imposing a tax represents an arbitrary decision dependent only upon the insight and goodwill of the legislator, that the Government can therefore be held responsible for the consequences of the tax, and its policy in this field, as in others, be discussed and criticized by the man in the street. The same price movements as those accompanying taxation, however, or even far more pronounced movements, when attributed to other causes, are generally accepted much more calmly, indeed with a kind of fatalism. The reason for this relative passivity is that the mass of the people understand only partly, if at all, even the most immediate aspects of the process by which prices are fixed in a market free from fiscal or other perceptible intervention on the part of the authorities. Feeling on the subject is aroused only when some particular case gives rise to the suspicion that morally reprehensible, and in particular usurious, practices are causing prices to be higher than they should.

A similar difference of attitude to the same two closely related phenomena is to be found among economists.

Although many careful, systematic, and thorough enquiries have been conducted into the problem of the passing on of taxation, this cannot be said of the problem of cost-shifting in general. Excellent work has indeed been done on the subject of price determination, and has furnished useful material for the examination of this

problem;[1] the relation between wholesale and retail prices, and the influence of variations in the former upon the latter, are very frequently dealt with by both writers and lecturers. But the theoretic treatment of the problem of the shifting of costs occupies only a very modest place in economic literature.

This quite remarkable illogicality in the attitude of the theorists to the problem is not hard to explain. The classical writers had based their economic theory upon a supposed natural state of economic organization, and regarded all deliberate intervention by the State as something artificial which could and should be abstracted by the theorist in order that the "natural" condition, which alone can reveal the laws governing economic life, might be clearly perceived and analysed. They believed that they had solved, in this way, the problem of value in exchange, and with it that of price fluctuations, so that a further study of the actual processes of price-shifting seemed hardly necessary. In this teaching, however, there was no place for the subject of the repercussions of taxes. Taxation was regarded as a form of State interference in the "natural" course of economic life, and in particular in the "natural" evolution of prices. A price movement caused by a tax was therefore essentially different from a price movement due to the free interaction of purely economic forces. The effects of political intervention, and hence the process of passing

[1] Cf. the results of the enquiry organized by the *Verein fur Sozialpolitik* entitled "*Untersuchungen über Preisbildung*" (*Schriften des Vereins*, vol. 139–46). The subject has received most attention, however, from American and English economists, by whom it has been dealt with very fully.

on taxes, must be treated quite differently and separately from the problem of "natural" value. This distinction between the passing on of taxes and of other costs came to be drawn even more sharply when taxation began to be studied with a view to deciding which taxes might be approved politically on account of their economic repercussions, and which might not. In this study, which entailed enquiry into the shifting of taxes, it was taken for granted that the practical political questions connected with taxation should be approached with a view to the adoption of just measures. But neither the classical economists nor their successors thought of looking for or promoting justice in the economic system as a whole, considering it to be regulated exclusively by the free play of contending forces, and to be governed by nature alone.

This view, however, took no account of the fact that free economic activity and the price-levels which result from it are dependent upon a legal structure which is upheld by the will and the power of the State, and which can be modified and made to yield different results by means of legislation—that is, by State intervention.

All economic life is conducted within the framework of a legal system, which sets limits to the economic power of the individual and in which society's conception of justice finds its objective expression. Even when only two people live together in peace, their common life is regulated by a system of laws, however primitive. Their relations would cease to be peaceful if both began to want and claim the same things at the same moment.

The consciousness of each that he must not simply take what he wants irrespective of the other's desires, but must regulate his conduct in accordance with them, is evidence of the existence of such a system.

The legal system of a highly developed community is extremely complex, and consists of all the statutory enactments (acts, orders, and regulations) as well as the case law and the customary law in force at any given time. An immense number and variety of private agreements are continually being concluded within this framework, regulating the economic relations between individuals and groups of different kinds. If a legal provision is violated, it is this general system which determines how the case shall be dealt with, as regards both questions of substantive law and of procedure involved. Even unsatisfactory provisions, in so far as they are in force, have their effect, whether this effect is the intended one or not. And even when a legal system is destroyed and replaced by the will of a tyrant or band of tyrants, economic life continues, adapting itself to the new arbitrary framework, however precarious, that is provided for it.

The forces of nature obey their own eternal laws. Everything in the world—the fertility of the earth, the procreative powers of men and animals, human capacity for work, the utility of tools and machinery, and all that arises, persists, and perishes—is subject to natural law. Human law is impotent to govern these things. But it can, and does, govern the *use* made of the powers of nature. Among the innumerable alternative methods of using these powers, positive legislation makes the

decision, and thereby sets the course of the economic consequences which follow from man's exploitation of the Earth's resources.[1]

There is no economic institution which is not at the same time a legal institution, and no economic activity which does not involve a legal process. The production, exchange and consumption of goods entail legal processes, and are conducted on the basis of legal institutions in virtue of which private individuals and public and private bodies of every kind are enabled to use land, use tools and machines or employ persons to use them, retain their produce for themselves or transfer it to others, and so on. It is impossible to conceive of any process in economic life whose character is not affected by some law and would not necessarily be different if the law applying to it were other than what it is.

Although it is customary for continental lawyers to divide the goods which constitute the property of a natural or a legal person into corporeal property (things) and incorporeal property (subjective rights), this classification does not correspond with reality. Property rights entail the subjection of the material object to the will of their owner: every material object which constitutes part of a person's property is "covered" by the subject's clearly defined right of disposal over it. The sphere of material objects, and of rights in respect of such

[1] This subject is dealt with in more detail in the author's treatise "*Über das Verhältnis der Volkswirtschaftslehre zur Rechtswissenschaft und zur Politik*" (Booklet No. 14 of the *Internationale Vereinigung für Rechts- und Wirtschaftsphilosophie*), Berlin and Leipzig, 1919; see also the author's treatise on "*Recht und Wirtschaft*" in the *Handbuch der Politik*, third edition, vol. i, pp. 113 ff.

objects, is thus contained in the all-embracing circle of subjective rights.

Material objects have exchange value only if they are at the same time objects of rights. The "free" goods, such as air (gases) and water, have exchange value only in so far as they are objects of rights arising from appropriation.

Every market value involves a legal right. The owner of a house can convey its ownership, mortgage it, create a usufruct in respect of it, or let it; and each of the rights thus attaching to the house—ownership, mortgage, usufruct, and lease—has its own market value. When a house is mortgaged or let, it is not the house itself that is transferred, but a certain legal interest in the house, just as when hydraulic power is sold it is not the water or power that changes hands, but the right to use them.

Because ownership includes, in principle, the whole material object to which it refers, it is customary to identify the object with the right. One speaks of owning a house, not the rights of ownership attaching to a house. This usage will be followed here for the sake of brevity; but in reality ownership (or any other right) and the object to which it refers can no more be identical than one and the same entity can be both corporeal and incorporeal at the same time. Just as the Kantian "thing in itself," hidden behind its objective appearance, cannot be perceived except through this outer cover and yet differs from it in being unaffected by subjective influences, so the things entering into economic transactions always appear in the guise of some legal right. It must therefore be kept in

mind that reference to the exchange value of material objects necessarily and directly involves reference to rights. The value of a house, for instance, irrespectively of its position, architectural qualities, and so on, may vary widely according to the definition of rights of ownership and possession contained in the legislation of the State concerned, and according to the nature and scope of the special limitations to which it is subject by law, e.g. fiscal laws or laws relating to road construction or servitudes, mortgages, charges, pre-emption rights, etc.

All goods which enter into economic life thus owe their value not only to their material properties but also to the rights determining their use.

9

Value and National Security; the State as a Creator of Value

From the foregoing remarks it will have become clear that every change in the legal structure of a society can and must have a direct influence upon the process by which the economic value of its goods is determined.

Such changes may be effected by the legislative authority's passing new laws and repealing or amending old ones. In times of serious crisis or depression, for instance, ownership rights are often restricted by measures for the protection of tenants or measures limiting the exercise of the remedy of distraint in respect of land.

Legal provisions laying down maximum interest rates affect the value of bonds. Land tax legislation plays a large part in determining the value of real estate, reductions and increases in tax rates generally being followed by rises and falls in values. And so on in every branch of the law.

On the other hand, a change of the greatest importance for economic values may occur in the legal system without any legislative measure being taken. For if the stability of this system is impaired, that is, if the guarantee of its continued and constant operation is weakened, the whole economic life of the community concerned will be affected.

The security of a society's legal system, and with it the maintenance of the value of its members' goods, is endangered whenever the administration of justice ceases to command public confidence, and whenever the legislator, by acting inconsistently or departing from the fundamental principles regarded as the permanent basis of the system (without necessarily committing any formal breach of the constitution), destroys general confidence in its persistence. A state of war may permit or demand such "dictatorial" action on the part of the legislator. The invasion of a country by a hostile force can thus lead, through the suspension of the existing legal system, to a complete revolution in the economic values of its goods. *Inter arma silent leges.* A revolt or a state of exceptional emergency may produce the same result. But in all such cases the law is only silenced by the noise of war or catastrophe. As soon as the emergency is over it can begin to speak again; the State renews its guarantee of the legal

basis on which civil life rests, and restores its protection to private property and contractual rights.

Every action which contributes to the prevention of dangerous conditions tends to maintain economic values. All expenditure entailed in such defensive measures is therefore "productive." There can be no doubt about the productive character of expenditure on armaments, for instance, so long as the armaments are used for the maintenance or reinforcement of the defence of law. Measures which guarantee or strengthen the protection of the legal structure of society contribute as much to the value of its economic goods as do technical improvements in their material properties. The necessity of a police force to preserve order and safety within a country can hardly be denied, nor therefore the utility, from the point of view of the country's economic values, of the expense involved. But if the validity of this reasoning is accepted with regard to protection against internal disruptive forces, it must be accepted also with regard to defence against irruption from outside. The question how much should be spent on such defence in order to make it effective in any particular case is a separate issue. The assertion here made, although often heard and discussed in political debates, refers really to a purely theoretic question: is military expenditure economically productive or unproductive? And the answer to this question is that it is productive in the same sense, and with the same reserves, as any form of insurance against accident or any other precautionary measure.

Part of the value of every commodity, then, is due to the influence of the *State* and its institutions. In imposing

taxes, the State may be said to be drawing its share of the profits derived from a productive process in which it is continually participating, even though its participation may consist simply in the maintenance of the law. This, indeed, may be regarded as the fundamental justification of the State's right to tax.

Modern fiscal legislation offers many examples of the taxation of specific economic values which have been directly and obviously influenced by the action of some public authority. When, for instance, a local authority spends a large sum of money on the construction of roads, which increase the value of the land bordering on them, it is a reasonable and common practice to impose a special rate upon the owners of this land, since they benefit more by the public expenditure in question than the rest of the rate-payers. The same practice is followed when the State creates a new garrison town, sets up a new university, or extends a railway line to some outlying part of its territory; it is usual, in such cases, and particularly in cases of the latter kind, for the State to oblige the localities benefited to make some special contribution towards the expense (subsidies, guarantees, free cessions of land, etc.).[1]

Less obvious, but none the less real, is the relation of

[1] It could be contended quite logically, by a similar line of reasoning, that when action taken by a public authority in the general interest has a particularly *adverse* effect on the interests of certain individuals or communities—as when a garrison or Government office is removed from a town in which it has long been quartered or situated—these individuals or communities should receive special compensation. This reverse side of the principle of equality in taxation, which was formerly considered hardly worthy of serious examination, assumed practical importance in the post-war period in States which were obliged to reduce and simplify their administrative apparatus.

economic values to the general activity of the State. When an industry is prosperous, it owes its prosperity not only to the technical and commercial ability of its administrators but also, among other factors, to the legal system within which it operates.

Every legal provision has a definite object. It is now customary, in many countries, to make known the object of an enactment before promulgating it. It is clearly set forth for the information of contemporary and subsequent generations, and can be objectively and scientifically examined. But this has not always been the case. The objects of the ancient, basic institutions of civil law—particularly those of property and inheritance—have to be explained, historically and philosophically, *ex post*. These institutions, as far as it is possible to judge, were not consciously elaborated with a view to clearly formulated purposes, but grew spontaneously and necessarily out of men's needs. But they have persisted because they did and do in fact serve certain politico-economic ends. Moreover, every detail of their present elaborate form is the outcome of a conscious process of law-making in which, of many possible solutions—including the restriction of property and inheritance rights—just those have been adopted which are now in force.

It is absolutely incorrect, therefore, to describe the State's influence in the determination of economic value as artificial interference in a "natural" process. There is nothing artificial about State intervention as such; on the contrary, a highly developed economic system could not conceivably exist without it. For since all exchange value attaches to individual rights, it is necessarily dependent

upon the factors which create and uphold these rights—that is, upon the State and its activity. Although theoretic enquiries into the problem of value often leave out of account the influence of the State—just as experiments in natural science are sometimes conducted in a vacuum—they always start out from the assumption of a legally ordered economic system. In eliminating the State, therefore, they really assume not a Stateless, anarchist society, but, on the contrary, the existence of a State of ideal stability in all its organs and functions, whose influence on economic life is perfectly constant.

It is the *elimination* of the State that is "artificial." If the theorist finds it necessary to have recourse to this fiction, he must realize that it involves the mutilation of the object of his study. There are three terms, not two, in the problem of value: the object valued, the individual who values it, and the active presence of the *State*.

Before the examination of this third element is taken up, however, an attempt will be made to review the main conclusions hitherto reached with regard to the first and second.

CHAPTER III

The Lower Limit in the Determination of Value

10

The Value of Services as the Starting-Point of the Analysis

A GLANCE at the history of value theories discloses that nearly all of them, in spite of their great variety, resemble each other in being concerned primarily with the value of *material* objects. Even the examples used in their exposition generally refer to the exchange of material goods, whether for money, as in sale, or for other material goods, as in barter. Personal services are usually relegated, both in the older and in the modern value theories, to a position of secondary importance. The theorist usually discusses the value in use and the value in exchange of material commodities and then declares his conclusions applicable generally to whatever possesses value, and in particular to human labour. The only exception made to this generalization is that allowed by many writers in respect of money, which is seen not to permit of such standardized treatment, granted the status of a value *sui generis*, and examined apart.

But business (sale, lease, etc.) in material commodities represents only a fraction of the total process by which economic values of all kinds are determined and paid for. It is only a fraction of society, therefore, that lives directly from the exchange of such commodities. According to the German occupational census of 1933, for instance, about 60 per cent of all gainfully employed persons were officials, salaried employees, wage-earners, or domestic servants—that is, persons whose professional activity consisted not in exchanging material goods but in hiring out their labour against remuneration. In the case of all these categories, it is to the hired labour that value attaches, even when the labour consists in selling material objects for the account of an employer. Of the remaining 40 per cent of the gainfully employed population, about half were registered as "independent" workers, traders, etc., and the other half as "members of the family assisting" persons so employed. The "independent" workers included, however, members of the liberal professions and officials and salaried employees occupying posts of direction, all of whose salaries and fees constitute remuneration for services. It may thus be estimated that about four-fifths of the total number of persons gainfully employed in the German *Reich* in 1933 earned their living by hiring out their labour.

In order to understand why economists, in dealing with the problem of value, assigned the place of first importance to *material* goods, it is necessary to recall that the working class did not succeed in emancipating itself and rising to a position of a certain independence in economic and political life until late in the nineteenth

century. Right up to that time, even after the disappearance of slavery and serfdom, relations between employer and worker had remained more or less patriarchal in character. The worker belonged to his master's household, or was treated as though he did. The true representatives of industry, trade, and agriculture were the craftsmen, the merchants, and the farmers—in short, the independent *entrepreneurs*; it was their interests that dominated the economic policy of the State. This was enough to assure them the chief attention of the economists. The problem of the value of material goods was thrust to the fore in all the theoretic discussions of the time, both for the reason just mentioned and because the doctrine of the just price had been formulated, from the outset, with reference to such goods; and it remained the chief object of all enquiries into value even after the economic and social position of the workers (particularly the industrial workers) had completely changed.

It is easy to underestimate the influence of sheer habit, and particularly of doctrinal orthodoxy, in holding theories of value to the beaten track. Even the opponents of a prevailing theory are usually influenced by their direct contact with the ideas which they set out to combat. For the critics of a doctrine always seek to prove its errors, and the correctness of the teaching advanced in its stead, by reference to the examples used by its exponents. Even the socialist writers on value adopted the same attitude to the question of the value of labour as the *bourgeois* economists whom they attacked. It certainly cannot be said of them that they lacked interest in this question; on the contrary, it was, and still is, their

guiding and dominating interest. Yet they have nearly always treated the value of services as a kind of derivative of the value of material commodities, to which they have given first place. Karl Marx himself was no exception in this respect, for he took the example of an exchange of material goods as the starting-point of his exposition of the theory of value, upon which he founded the entire structure of his *Capital.*

The fact that the representatives of the subjective theories of value have devoted their attention primarily to the value of material goods, and still do, is explained by the very nature of the subjective approach. For a line of study which proceeds from the analysis of human requirements and their satisfaction begins naturally with those goods which directly satisfy men's most vital needs (food, clothes, etc.); and these primary goods—"*Güter erster Ordnung*" to use the expression so common with the Austrian writers on marginal utility—consist, as a rule, exclusively of material objects.

The over-emphasis of material goods of which these different schools have been guilty becomes plain when it is realized that even the value for which a merchant selling a commodity receives his price is not embodied in the commodity itself, but is attached to a service exactly resembling labour remunerated by a wage, salary, or fee. What the buyer pays for is not the object bought, but the legal claim for procuring the commodity. This fact is unaffected by such accidental questions as whether the object is available at the moment of purchase, so that the seller can immediately fulfil his obligation to provide it, or whether an interval elapses because

it must first be obtained (or even manufactured) or because the buyer's delayed payment causes the seller to postpone delivery. Although, therefore, a purchase is a special form of contract from the legal standpoint, it falls, from the standpoint of pure economics, under the general head of remunerated services or labour.

The truth of this argument may be recognized most easily in the case of an article manufactured and sold by the same person—a craftsman, for instance. Here the purchaser's payment, though representing directly only the consideration for the obligation to transfer title in the commodity bought, constitutes also, indirectly, the remuneration for its manufacture—that is, for the craftsman's labour. If there is a merchant (or a series of middlemen) between the manufacturer and the consumer, the purchase price which the latter pays is of exactly the same character: it is the immediate consideration for the delivery of the commodity; but it is also the indirect remuneration of the labour involved for the merchant in procuring and delivering the commodity, and the reimbursement of his expenses—in which are included the price which he has paid to the manufacturer (or to his supplier if there are several middlemen).

The values attaching to material goods, or, in more precise terms, to the transfer of such goods, are thus only a part of the complex of values attaching to *services*. And as it is this whole complex that constitutes the essential subject of the economic problem of value, it would seem logical, in handling that problem, to begin with the study of the value of services in general and then apply the results obtained to the special case of material goods,

rather than to begin with the special case and then seek to apply the findings generally. In the present chapter, accordingly, attention will first be directed to the principal categories of services; only in the second place, and in the light of the conclusions reached on this subject, will the value of material goods be considered.

II

The Remuneration of Labour and the Subsistence-Minimum

The historical survey contained in the first chapter of this book will have revealed the close connection between economic values and the subsistence requirements of the persons participating in economic life.

This connection is most obviously apparent in the case of public officials and other employees who are normally engaged for life, and whose whole working time and capacity are placed at the disposal of the employer in exchange for a fixed salary. Clearly, in order to hire out his services in this way—that is, not in units for corresponding units of remuneration but for life against a single salary—a man must be able to subsist on the remuneration provided. No position in employment can possibly be filled unless a living is provided for the person occupying it. Even the pay granted to the last individual whose services are required by the economic system must at least be sufficient to maintain him, or his services will not be forthcoming. This principle applies equally to

public and private employment, and to highly and poorly paid workers.

It is true, of course, that the subsistence-minimum is not a fixed quantity. In the more advanced countries it has now come to mean not the bare necessities of life but the requirements of a decent, if modest, existence, according to the national standards of judgement. In many cases these standards are applied not only to that part of the employee's life which falls within the duration of his employment, but also to any periods of incapacity for work due to sickness, old age, or other causes; they further require that the employee's remuneration shall provide a decent existence not only for himself, but also for his family, which he is obliged to support, and sometimes even for his surviving dependents when he dies.[1]

This applies, in principle, not only to appointments for life but also to engagements of short duration. The services stipulated even in a short contract of employment cannot be performed, nor the position in question held, unless the employee is enabled to *live*. The difference, in

[1] The German Supreme Court, for instance, has described the position of the public servant in the following terms: "The public servant's salary may be regarded, in accordance with generally accepted views . . . as a pension sufficient to enable him to live as befits his rank, granted him for the duration of his employment" (*Amtliche Sammlung der Entscheidungen des Reichsgerichtes*, vol. xlvi, p. 87); and on another occasion as follows: "(the public servant) places his entire capacity at the disposal of the State for as long as they are required, and the State undertakes, in return, to maintain him and his family at a level suited to his position, first by means of a salary, later, when he retires, by means of a pension (and finally by providing for his dependants when he dies)" (*Amtliche Sammlung der Entscheidungen des Reichsgerichtes*, vol. lxiv, p. 61).

this connection, between the short and the long contract is not real, but apparent only: the shorter the stipulated duration of the employment, the less obvious is the connection between the rate of remuneration and the subsistence requirements of the employee. In the case of the labourer paid by the day, for instance, this connection is easily lost from view, for although a comparison of daily wages and daily needs is naturally attempted, it yields a less precise result than a comparison of the same elements over a longer period. For one thing, although a day-labourer's pay must in fact be such as to carry him over holidays, these holidays are not clearly and expressly covered by his daily wage as by remuneration stipulated in respect of longer periods of employment.

The direct, essential relation between the rate of remuneration and the necessities of life is still less perceptible in the case of labour paid by periods shorter than the day, and particularly in that of pay by the hour. What a man earns in an hour need not, and often cannot, stand in any direct relation to his subsistence requirements during that particular hour. As a rule, indeed, he will not require anything at all during working hours—not even food or drink—if he is properly provided for during the rest of the day.

The same considerations apply to *piece-work* (including work contracted for by the job), that is, to cases in which labour is paid not by means of a fixed sum calculated with reference to a unit of time, but according to the actual output of the worker, as when a miner is paid not by the day but by the amount of coal hewn, or a needlewoman not by the time spent at her work but by the

number and character of the articles produced. Where the work is such as to involve a whole day or longer period for its completion (as when the gathering of the harvest on an estate is performed under contract), the necessity of somehow adjusting the worker's remuneration to his subsistence requirements in this period is as clear as in the case of time rates. Where only a short period is involved, perhaps only a fraction of an hour (as with light repair work by a tailor or cobbler), the rate of remuneration may be fixed, as in the case of hourly wages, without any conscious reference to the total needs of the worker. It then appears to be calculated not according to the worker's subsistence requirements, but according to his output. It takes an objective form: its amount is determined by the quantity and quality of the services rendered or goods produced. Its projection upon the person of the worker, and dependence on his needs, are no longer perceptible. This apparent peculiarity in the determination of short-term piece-rates is a delusion, however. In reality, the rate of remuneration of every kind of labour or service tends to stand in a certain relation to the living requirements of the person who performs it. Indeed, it is in view of the necessity of establishing and maintaining this relation that systems of sliding scales of wages have been adopted at various times for the special purpose of guaranteeing the worker a sufficient wage (usually calculated on the basis of index figures of some kind) even when economic conditions are unfavourable.

If a piece-worker is constantly employed by the same employer—as is usual, especially with factory hands—

to such an extent that his working capacity is placed entirely or largely at his disposal, he is compelled to subsist on the wages received from that employer just as is the worker engaged on time-rates over a long period. His wages are therefore calculated, as a rule, on the basis of a fictitious daily, weekly, or other time-rate adjusted to his subsistence needs, in such a way that by working at a normal speed he can earn as much in the day, week, or other period as if he were employed as a time-worker.

The position is more complicated and difficult to analyse when a worker is employed not by one, but by a number of employers, and especially when this number is continually changing, as in the case of independent typists, dressmakers, and so on. Such indeterminate employment relations are typical, of course, of independent workers of all kinds and members of the liberal professions. In order to obtain a clear picture of this aspect of the problem, it will be well to consider the position as regards those of such professions and callings which are of an official or semi-official character, and the remuneration of whose members is fixed by the public authorities. Of the higher professions, those of notary and barrister belong to this category in many countries, and in a certain number the medical and other professions; the lower-paid callings of the same kind include those of taxi-driver, messenger, porter, chimney-sweep, midwife, etc. These professions and callings are required, in the public interest, to be filled by persons sufficient in number and sufficiently reliable in the performance of their duties, which means that the remuneration offered

to them must at least suffice to ensure the subsistence of this necessary number of workers. On the other hand, the public interest requires that the beneficiaries of the services provided shall not be exploited, but shall obtain them at reasonable prices. To meet these requirements, official schedules of charges are usually laid down, fixing in the greatest detail the prices to be paid by the public for the various kinds of services rendered by the callings and professions in question. Very often these official rates are compulsory, though sometimes, particularly in the case of the higher professions (e.g. the medical and legal professions in some countries), they need be applied only when a dispute arises over a charge made and the parties are unable to agree upon any other charge.

The rate fixed for each service enumerated in the schedule is determined by a number of considerations, including on the one hand the cost of the service, its duration, its difficulty, and the risk involved in its performance—in a word, the factors on the side of production, regarded as essential by the objective value theories—and on the other the volume and character of the public need for the service. Sometimes the factors on the side of supply predominate, sometimes those on the side of demand. But whatever may be the outcome, in each case, of the interaction of these various determinants, the chief and decisive factor in the fixing of all the rates in question is to be found in the necessity of providing the member of the profession or calling involved with a total income sufficient to maintain him.[1] Enact-

[1] See, for example, the reference on pp. 192, 193 below to the German law governing the profession of practising lawyer.

ments of the kind under discussion, and even the private scales of charges drawn up by different professions and callings, are usually based quite consciously on the principle that the income derived from the exercise of a trade under normal conditions, by a person of normal ability and activity, should suffice to provide such person with a livelihood. In practice, therefore, the essential consideration in the fixing of scales of charges is the manner in which demand is distributed among the different services rendered by the profession. Even when this consideration is not expressed, because obvious, it does in fact determine the rate applied to each service.

12

Remuneration for Labour and Income from Other Sources; the Iron Law of Wages Applied to Trades

From the preceding remarks it will have become clear that the problem of the lower limit of remuneration relates to the *sum* of the individual's services. The total earnings of a member of a profession or calling must attain a certain level. If this condition is fulfilled, the distribution of the total among the different services rendered is a matter of secondary importance. Some services may quite well be performed without any special charge, provided that the performer derives a sufficient income from the rendering of other services to make up the loss—just as a merchant may sell a product below its cost price, or give it away (e.g. for purposes of

advertisement), if he can recuperate its cost from the profits made on the sale of other products. Writers on economic value have generally argued that the value in exchange of every commodity must include, besides its cost, a reasonable profit for the seller. But even an examination of the value of services has sufficed to reveal that the amount of this profit is related not so much to the particular article sold as to the *total* income derived by the merchant from the conduct of his business as a whole.

Another factor, however, must be taken into account. Compensation for losses on one service may be provided not only by earnings from another service rendered as part of the individual's professional activity, but also by income obtained from external sources outside the field of this activity. The principle has been enunciated on an earlier page of this book that the total income of a profession or calling cannot fall below the level required to maintain the number of persons whose activity in that profession or calling is needed to meet demand. But this principle is subject to a qualification of great theoretic and practical importance. It holds good only on the condition that the income of the member of the profession or calling consists exclusively of the earnings derived from his professional activity—or in other words, that he is entirely dependent on his professional activity for his livelihood.

Economic theory has always tended to assume that the ordinary worker generally lives wholly upon his earnings in employment; such a position of dependence is usually regarded as characteristic of the "proletariat." But this view is far from reflecting the facts. Actually,

the contribution made by earnings to the satisfaction of the worker's vital needs is only of relative importance, which varies with the yield of other sources drawn upon at the same time. The yield of these other sources, the most important of which must now be discussed, may sometimes be very small indeed; but only in quite exceptional cases does it happen that a worker derives no part at all of his income from some such a source. The smaller the relative importance of a worker's professional earnings in comparison with the other income contributing to his maintenance, the lower the level to which they will constantly tend.

The most common subsidiary sources of income are three in number.

I.—In every human society whose standards have risen above the most primitive level, it is the duty of the possessing classes to make provision for the poor. This obligation is laid down in the teachings of all the religions of the world, and from the earliest times susceptible of historical study its enforcement has been the unquestioned function of the head of the family, tribe, or other community.

In the civilized countries of the present day, the adequate and benevolent relief of the poor is one of the accepted duties of the State or some other public institution or association, the work of these official organs of relief being very generally supplemented by that of church or private welfare societies, which are often organized on a large scale. Indeed, the view originated in Germany during the last decades of the nineteenth century, and has since been spreading to all parts of the

world, that the public authorities should not only provide assistance for the needy but also recognize the fundamental *right* of every worker to his daily bread, both during his employment and during periods of incapacity for work. The practical upshot of this idea is social (compulsory) insurance as it is known today, under which the insured worker is protected against the risks of sickness, accident, invalidity, and old age, and is granted, according to the recent legislation of some countries, a legal claim to relief in case of unemployment not due to his own fault. Social insurance schemes are financed to a large extent by contributions from the employers, the State providing a subsidy. The total benefits administered to the insured workers are thus considerably higher, as a rule, than the sum of the contributions paid into the fund from their earnings. Many States, including Great Britain and France, have gone even further than this and set up absolutely free old-age and survivors' pension schemes (and in some cases invalidity pension schemes) for their poorer citizens.

Social insurance, by providing for the maintenance of the worker when his wages are insufficient to this end, has a profound influence in the determination of the lower limit of his remuneration. If the "natural" wages supposed by the classical economists to emerge from the free play of supply and demand on the labour market are defined as the wages guaranteeing the subsistence of the workers as a class, they are relieved of this function in so far as social insurance undertakes the same task. The wages that the worker earns during his employment may thus

be below the level assigned to them by classical theory. Before the introduction of social insurance, moreover, the same influence was exerted on wages by statutory relief systems. In England at the end of the eighteenth century, for instance, poor relief was so organized that any worker whose earnings failed to reach a normal rate laid down in a fixed scale (in which account was taken of the price of grain and the number of dependents) received an allowance equal to the amount by which they fell short of this rate. The consequence of this system was that the taxes from whose proceeds it was financed soared rapidly to impossible heights, while the wages of labour constantly sank. Nor was this an isolated and exceptional case. The general experience with statutory poor relief was such as to justify the view, which came to be held commonly, that its sole effect was to enable the wealthy employer, at the expense of other members of society, to pay his workpeople inadequate wages.[1]

Other things being equal, the level of wages obtaining in countries having no social insurance will be higher than that obtaining in those in which such insurance is widely developed. This is one of the reasons—perhaps the chief reason—why the wages of the United States workers, for instance, are so much higher than those of the European, particularly the Central European, worker of the same category. When international comparisons of real wages are made, therefore, account must always

[1] Malthus, in his *Essay on Population* (Book III, ch. v, and Book IV, ch. xiii), argues that the indirect consequence of an extensive poor-relief system is to depress the general level of wages.

be taken of the element of social insurance. For where this element is present the true value of the wages, that is, the importance of the wages for the maintenance of the worker, can be made comparable as between different countries only if the value of insurance rights is added to normal wage-rates.

But wages do not always or necessarily decline when thus relieved of the function of ensuring the continued subsistence of the working population. The elimination of this function may even lead to their increase in certain circumstances, particularly when the workers derive from other sources means of subsistence so plentiful as to satisfy, alone, all their needs. Economic independence of wages strengthens the position of the worker *vis à vis* the employer. The less dependent he is for his livelihood upon what he earns in employment, the better is he able to withhold his labour until he is offered a relatively high price for it. External sources of income, if they are not merely supplementary but the *chief* sources, can therefore push up the rate of remuneration of labour to a higher level than it would occupy in their absence. This possibility was revealed with startling force in the early stages of unemployment insurance, in which it became clear that the grant of unemployment benefit in excess of a certain sum and without certain safeguards against abuse is likely to cause workers to withhold their labour, by offering them an easy alternative to wages. The operation of an unemployment insurance system still suffering from infantile diseases of this kind resembles that of a strike financed by a workers' organization in order to keep part of the labour supply off the market, so that the

workers remaining in employment may secure higher wages than would otherwise be obtainable.

II.—The remuneration paid for services or labour may not have to suffice alone for the maintenance of the worker if he is in such a favourable economic position that he can claim, besides, or instead of, benefits under compulsory insurance, benefits under a free insurance scheme, or (which is virtually the same thing) if he has saved enough money to provide himself with an independent pension.

Of general significance in this connection is the case, common in many parts of the world, of the agricultural or industrial worker who owns and cultivates a piece of land, making himself independent of wages, to a certain extent, by himself producing a part of his requirements. In regions where this practice is widespread the level of wages may remain, not merely for a time but permanently, below the level corresponding to the subsistence-minimum of the worker. The same applies frequently to women and girls of the lower middle-class who compete with professional needle women and embroiderers by engaging in sewing or embroidery for remuneration, or with professional teachers by giving lessons. For such workers, the earnings thus obtained often constitute a mere supplement to the maintenance provided from the salary of the husband or father, or to a pension; the prices charged may therefore be below, and generally are below, the level required to provide a bare or even wholly insufficient living to other workers who are entirely dependent on them.

Examples of the same independence of remuneration

are to be found even among public officials. There were in former times—and still are today, though they have become less common—positions in the public services of many States, and particularly in their diplomatic services, in which the salary paid was insufficient to meet the expenses involved in filling the position as it was expected to be filled. The level of remuneration of such categories of officials has little or nothing to do with their subsistence needs, and is explained only by the fact that their salaries play but a supplementary part in their maintenance. The extreme case is that of the "honorary" position, to which no salary or fee of any kind is attached, and which is occupied either from idealistic motives or in view of accompanying advantages, such as a title.

III.—Lastly, an employee may obtain a subsidiary income from some work performed outside his regular employment, perhaps in another trade altogether, or perhaps by other persons, as when the head of a household benefits from the work of the members of his family. Such subsidiary earnings, by diminishing the degree of his dependence on his remuneration, have the same effect upon it as insurance or a private pension.

Among the numerous types of such subsidiary income must be included, strictly, the case already mentioned of the cultivation, by an employee, of his own plot of ground—in so far as the yield of the plot may be said to cover not only the interest on the capital invested in it but also the wages corresponding to the labour applied to it. But the most important type is that of income derived from the exercise of a subsidiary trade. In certain regions, for instance, it is common to combine agri-

cultural wage-earning with some form of home work. Whether this work is performed by the agricultural labourer himself or by the members of his family, the consequence of the system is that at least one of the two occupations can be—and frequently is—engaged in for remuneration at a level below that which is granted to workers unable to take double employment and compelled to earn their living entirely either as farm labourers or as home workers. The competition of persons earning from the exercise of two trades may thus force down the wages, and hence the standard of life, of those engaging in only one of them to a lower level than would otherwise obtain. Wherever such double employment prevails, therefore, the level of wages in any one of the occupations concerned is determined in the main by factors which have nothing to do with the nature of the work performed in that occupation, its cost, or the demand for it, but depend on conditions in an entirely different trade and upon an entirely different category of workers. A regrettable but striking example of pressure of this kind upon wage-levels is offered in some countries by certain female occupations in the entertainment and restaurant trades, in which very low rates of remuneration are possible because the persons concerned derive a second income from prostitution.

It is usual to speak, in all these cases, of "unfair" competition on the part of those for whom the trade under discussion is only one of several sources of income, and this term expresses the moral disapprobation with which the resulting wage-level is regarded. The expression is indeed very often used even when the subsidiary income

is derived from a trade no less honourable or arduous than the principal occupation, as for instance in the case already considered of women performing handwork or giving lessons in competition with professional seamstresses or teachers, simply as a means of earning a little pocket-money. A rate of remuneration or scale of prices may be fixed by a perfectly sound and normal economic process, and yet have results which must be condemned as socially unjust. This sense of justice is offended whenever a person who has learned a useful and necessary trade, possesses the capacities required for its exercise, and depends upon it for his livelihood, is robbed of his daily bread by the cheaper labour of someone who does not need to engage in the trade at all. The judgement passed here reflects the traditional conception of the "livelihood" to which every worker is in some sense entitled, and its close connection with the idea of value.

When a person is forced out of his trade, however, he is not necessarily deprived of every possibility of earning a living by his work. Even if he can no longer carry on in the particular branch to which he has been trained and become accustomed, he may succeed in finding another field of gainful activity. And this applies not only to individuals but to whole professions. When the basis of existence upon which a profession has hitherto rested disappears (as when the coachman's trade was undermined by the coming of motor transport), the members of that profession must all adopt new occupations and adapt themselves to their requirements.

A skilled worker in any profession or calling who finds himself in this position generally has a choice between

two possible courses of action. Either he may qualify himself for employment as a skilled worker in some other trade (as, for instance, coachmen thrown out of work frequently learn to drive a motor vehicle and so continue to earn their living in an occupation similar to that which they are obliged to give up); or he may, if for some reason he is unable to fit himself for a new skilled trade, or if such skilled trades as he is capable of learning are already over-full or otherwise closed to him, take employment as an unskilled day-labourer or jobber. The possibility is open to every skilled wage-earner, indeed to every wage-earner except those of the lowest grade, in any branch of activity, just as it is open to every independent worker, salaried employee, official, or member of a liberal profession, to change his occupation for a more humble one if he is thrown out of work. Save in the case of personal disability such as old age, sickness, infirmity, and so on, such a worker can always, in the last resort and if driven by sheer need, set aside his education and vocational skill and seek work for which neither talent nor training is wanted. His existence as an individual is not threatened by the relentless arm of the iron law of wages until economic conditions cause the remuneration not only of skilled but also of unskilled labour to fall below the subsistence level.

Up to the point at which the least remunerative form of employment is resorted to, what is directly at stake is not the life of the individual but only his continuance in the particular profession or calling in which he has hitherto been engaged. If, for instance, a barrister ceases to be able to live by the exercise of his profession, this

does not mean that he will be removed from the land of the living by hunger and distress, the fearful myrmidons of the iron law. It is at first only the barrister as such who disappears; the profession becomes the poorer by one member. The number of barristers must decline as economic distress in the profession increases, until the point is reached at which the available employment suffices to provide a livelihood for those who remain. Outside the class of unskilled workers, therefore, the iron law of wages, which determines the lower limit of remuneration by eliminating surplus labour, applies less to individuals than to professions or callings.

The operation of this principle is not limited, however, to the sphere of labour (manual or intellectual) remunerated as such. It extends also to the trades connected with the exchange of the products of such labour, that is, with the purchase and sale of material goods (raw materials and semi-manufactured articles, as well as finished products); it therefore applies to the whole class of independent merchants, which includes independent manufacturers, artisans, farmers marketing their own produce, and all engaging independently in commercial activity in the widest sense.

13

The Price of Material Goods and the Subsistence-Minimum of the Merchant

The merchant lives on what he earns by selling his wares, just as the worker, civil servant, or member of a liberal

profession lives on the remuneration received for his services.

The idea, discussed on an earlier page, of the projection of wages, including piece-wages (and fees), upon the person of the worker, is thus equally valid here: the value of material goods may be regarded as projected upon the person who sells them. What has been said of these other categories of workers, therefore, applies also to the merchant, whether the goods which he sells are of his own manufacture or whether he is acting simply as a middleman between the manufacturer and the consumer. When a merchant is no longer able to continue in his trade, the number of persons engaged in that trade is diminished by one; such individual failures may even be so numerous, in certain circumstances, as to cause the disappearance of whole trades or branches of economic activity. And those merchants who give up their own trades must turn to others, either selling other lines of goods, or entering some profession other than that of independent trader, or—in the last resort—becoming merged in the great body of unskilled labourers.

It will thus be seen that the iron law of wages, subject to the modifications mentioned in the foregoing pages, applies not only to the price of labour or services, but also to that of material goods. It is, in fact, a *general* law governing *all* prices.

In the case of material goods, as in that of services, this law applies not to earnings or profits on isolated units sold, but to aggregate income. Just as an employed worker must receive a subsistence wage adjusted not to the needs of separate hours or days, but to those of his life as a

whole, so the gains of the merchant must be calculated not in respect of the several articles which he sells, but in respect of his total business.

The economic policy of the town in the Middle Ages, and of the State during the mercantile period, was directed to securing a livelihood to every trade; it was with this aim in view that the authorities determined prices. And account was taken, in the process, not only of the profits of individual business transactions or the profits earned on individual commodities, but of the total income of the trader, which must be sufficient to *keep* him alive. All such regulative measures, whether of prices, methods of production, or other factors, were devised for the purpose of assuring a due living to a profession, that is, to a class or category of persons engaging in a given trade.

In order to determine the livelihood to be earned by any particular trade, it was necessary to ascertain carefully which undertakings were to be regarded as belonging to it, and to limit the activities of these undertakings to the spheres proper to the trade in question. The different branches of economic life were thus clearly demarcated both theoretically and practically. It was known exactly, and stipulated expressly in the industrial laws of those times, what kinds of work might be performed and what wares sold by the members of each trade. The least infringement of this network of limitations was strictly forbidden; no trade was allowed to encroach upon the well-defined prerogatives of another.[1]

[1] A particularly striking and amusing example, which well deserves to be saved from oblivion, is described by L. Vischer in his book *Die*

This restriction of manufacturing rights gave place, in due course, to freedom of production and trade, under which, except in specified exceptional cases, any person was allowed to enter whatever profession he chose, or even to engage simultaneously in two professions (according to the traditional divisions of professional activity). Very full use has been made of this last possibility ever since its introduction.

But a manufacturer who produces and sells various kinds of products is not dependent for his livelihood

industrielle Entwicklung im Königreich Württemberg. About the middle of the nineteenth century a dispute arose between the furriers' and the purse-makers' gilds of Stuttgart over the manufacture by the former of a fur cap lined with chamois leather. The purse-makers contended that they alone were authorized to work in chamois leather, and that they were therefore entitled to forbid the manufacture of such caps by the furriers; and they supported their contention by reference to their rules, which contained explicit stipulations concerning the point at issue. The furriers, on the other hand, argued that since they were entitled to line fur jackets with leather, they were entitled to put the same lining in fur caps. The masters of the two gilds were called before an arbitration board. Here the master of the purse-makers' gild, turning the cap inside out, pleaded that the question was settled by the rules of his gild, since the object in question was—as the board must agree—a perfectly good and marketable *leather* cap. His opponent, however, turned the cap fur outward again and asked the board to admit that it was in reality a genuine *fur* cap. As the hearing continued, the two disputants speaking in turn, one of the members of the board gave further expression to the humour of the situation by turning the cap now this way out, now that, as one party or the other stated his case. It was finally agreed that both the gilds should be allowed to manufacture articles of all kinds in both leather and fur—in other words, that the dividing line between them should be removed. The decision was followed by others of the same kind, unifying trades previously segregated, and this to such an extent that complete freedom of production and trade already existed, in fact, when later a law was passed to proclaim it.

upon any one of the branches involved. His maintenance is assured if the combined operation of these branches yields a sufficient profit. His position is thus analogous to that of the worker in plural employment, to which attention has already been directed.

As a consequence of technical and scientific progress, joint supply has in many cases become a necessity, and evolved more or less automatically. It has become a characteristic feature of modern industry. No study of the problem of value in its present form and bearings, therefore, can possibly afford to ignore the effect of this development upon commodity prices.

Very many industries (especially among those in which chemical processes are involved) produce not only the main product in whose manufacture they are primarily engaged, but also a number of by-products which are also of commercial value. These are often known as "waste" products, and were in fact treated as the name implies until the invention of new processes made their use possible. Only a few of a vast number of possible examples can be mentioned here: it was found, on the introduction of the Thomas-Gilchrist method of iron-smelting, that the slag so produced makes an excellent fertilizer if ground into a fine powder; waste wood, which was formerly burned, for the most part, can now be used for the manufacture of alcohol, fodder of various kinds, dextrose, and other valuable and even highly valuable products; the waste gases of blast-furnaces and coke-ovens are no longer allowed to escape into the atmosphere, but are used to drive gas-engines and for other purposes. There are innumerable other by-

products, which were once of little or no commercial value, and whose removal or destruction sometimes entailed expense, but which now contribute, thanks to inventions and discoveries, to the earnings of the undertakings producing them. The aggregate income of an undertaking is often affected substantially, even decisively, by the use made of its by-products. Indeed, the history of more than one industry reveals that what was originally a by-product may, as a result of changes in market conditions, become the main product, while the original main product may dwindle in importance until it assumes the status of a by-product. In many gas-works, for instance, the manufacture of gas is today of secondary importance only, coke having become the main product.

The conditions under which the several products of an undertaking engaging in joint supply can be brought to the market differ very widely from those governing the sale of a commodity which is the sole product of its manufacturer; for the expense involved in the production of a commodity of the first category is inextricably bound up with the costs of production of all the other commodities produced in the same undertaking, however varied their character may be. This does not, however, dispense the manufacturer from the necessity of ascertaining, with as much precision as possible, the costs and hence the profitability or otherwise of each line of production, in order to decide which should be intensified, which curtailed, and which, if any, eliminated.

The calculation required here is highly complicated, and the temptation to resort to arbitrary methods is

great. The more varied the commodities produced in the undertaking, the stronger is the temptation to estimate arbitrarily the share of the total costs to be assigned to each. If, for instance, a brewery manufactures only one product, namely beer, and maintains a fairly constant standard of quality, the cost of production of a gallon of beer can be calculated simply by dividing the total costs of the undertaking over a certain period by the amount of beer produced. If, on the other hand, a chemical works manufactures simultaneously a number of entirely different products, or if a copper-mining undertaking mines and smelts silver and other ores as well as copper ore, the various products passing through the same processes, the same machines, and the same hands before being separated, the costs of production are common to all, and there is no generally accepted or universally applicable method of distributing them.

The difficulty of the problem may be further illustrated by an example taken from F. Leitner's book on cost accounting in industrial undertakings.

> "A large ironworks includes as its main branches coke-ovens, blast-furnaces, steelworks, cogging-mills, rolling-mills, straightening shops, and foundries, and as subsidiary departments power-houses, boiler-rooms, workshops, construction sheds, and railways. One method of costing is to calculate the costs of production only of the main branches, those of the subsidiary departments being included in them. The total expenditure entailed by the main branches is calculated annually, and divided by twelve to indicate approxi-

mate (normal) monthly costs, monthly fluctuations being disregarded. Another method is to distribute the cost of the subsidiary departments among the main branches according to fixed percentages; . . . yet another is to assign certain departments to each branch, their entire costs being included in those of the branch under which they are grouped. The general costs (business expenses, the writing-down of capital, the upkeep of the undertaking as a whole, etc.) are distributed sometimes among the main branches proportionately to their wages bills, sometimes among certain of the main branches only (e.g. blast-furnace, foundry, and rolling-mill branches), or certain of the subsidiary departments, and sometimes, again, where advanced systems of cost-accounting are used, among all the branches and departments proportionately to their own costs. In some ironworks, accordingly, only the costs of production of the main products (coke, pig-iron, ingots, blooms) are calculated, and not those of the by-products (gas, ammonia, tar)."

The choice of the method of accounting is made by each undertaking, in the light of the practical circumstances of its own case. Even if the industrial or fiscal legislation of a country, or some other obligatory provision, prescribes the manner in which such accounts must be kept, each undertaking is free to compute its own costs as it thinks fit for its own internal purposes, and in particular for the purpose of fixing the prices of its products. The guiding principles governing the distribution of costs within an undertaking are usually

arrived at by negotiation between the branches and departments concerned.

Modern theories of business management, which go in great detail into the subject of cost analysis, have long recognized the impossibility of allocating to each of the lines of production of a joint supply undertaking a precisely determined proportion of the total costs. From the practical point of view they are doubtless perfectly right in concluding that this impossibility is not of great moment, or even noticed at all, save in exceptional times (as, for instance, the war period, when prices had to be regulated). From the point of view of the theory of value, however, it is of the greatest importance. For if it is admitted that there is no way of calculating the cost of an article produced under conditions of joint supply, the same must be said, *a fortiori*, of the labour represented in this cost—irrespective of whether the amount of labour required for the production of a commodity is defined in terms of the Marxian conception of "socially necessary" labour or in some other way. All that can be done, once the impossibility of accurate analysis is established, is to see that the different lines of production *together* yield a profit sufficient to maintain the owner or owners of the undertaking. The ultimate determinant of the lower limit of market prices is thus the necessity that every producer whose economic activity is necessary and of importance to the State (this last condition is discussed on a later page) shall receive a total income upon which he can subsist. What part of this income is derived from each line of production is immaterial. So long as a subsistence income is provided by the undertaking as a

whole, the selling price of this or that commodity may fall—and remain—below its cost of production.

In agriculture, the problem of production costs plays the same rôle, and is of essentially the same character, as in industry. Only whereas, in the industrial field, the special difficulties of cost accounting which arise from the simultaneous manufacture of several products by the same undertaking are limited in the main, as far as their practical aspects are concerned, to large establishments, this is not the case in agriculture, or at any rate, in the agriculture of the old countries. For middle-sized and small farms commonly engage in the production of a variety of goods, including different cereal crops, fruit, poultry and eggs, cattle, dairy produce, etc. The nature of agricultural production, particularly on small farms operated partly at least by the owner and his family, accentuates the difficulty of accurately distributing the total costs, including both personal labour and financial expenditure, among the different products.[1]

Finally, in the field of trade, it has been a natural and common practice, from the earliest times, for the merchant to deal not in a single commodity but in a variety of such goods as he is able to market. Such was the case both with the pedlars who roamed the country hawking their wares wherever they went, and with the large traders united in gilds, who travelled abroad with the

[1] Fiscal legislation, particularly income-tax legislation, often reveals a singular failure on the part of the authorities to appreciate this characteristic of the agricultural undertaking by requiring of the farmer, for the sake of administrative uniformity, detailed calculations of costs and profits, where more or less arbitrary estimates are the most that can possibly be expected of him.

products of their localities and returned loaded with those of foreign lands.

On the other hand, home trade in local goods was usually carried on by the producers themselves, each marketing his own work, until in the mercantile period the sale of the various products of each branch began to be concentrated in the hands of dealers. The craftsman generally sold his own handiwork, as he does today in the very limited field still left to that form of production. Even after the removal of trade restrictions had led to the separation of production and trade over a large field (to be followed, in the last few decades, by a new tendency towards unification) many elements of their traditional fusion remained visible and influenced the course of developments. In the marketing of finished products, and in manufacture, it remained the rule that one establishment should not deal in a jumble of entirely different wares: the bookseller should not concern himself with the sale of hardware, or the ironmonger deal in game and poultry; meat, hosiery, confectionery, and so on, had nothing to do with one another, and should be supplied through different establishments. The only exceptions generally considered proper related to village stores and the hawker's trade, in which the smallness of the market and the possibility of successfully gauging its total requirements made a liliputian combination of trades seem appropriate and permissible.

There were good reasons for the type of specialization required by this rule. For trade in a variety of wares calls in the first place for a wide knowledge, on the part of the merchant, of the different sorts of goods to be sold, and in the second place for larger and larger capital

resources as the scale and multiplicity of the business increases. Gradually, however, these two conditions came to be fulfilled, for the advantages which freedom of production had created, or increased where they already existed, for the large-scale undertaking, clearly applied to trade as well as to manufacture. When an undertaking can sell goods in large quantities, it can increase its total profits by means of a reduction of prices which, though curtailing profits on each article, eliminates competitors and thus extends its own market. But when it can deal simultaneously in several lines of goods, it enjoys the further advantage of having its risks spread instead of concentrated: if for any reason sales of one article are poor, compensation from the sale of another is to be expected in the measure in which the undertaking's stock is varied. The typical and almost perfect example of such an undertaking is the modern multiple stores.

The large stores of the present day are demonstrating to the public, in a most striking fashion, the effect of multiple trade upon the determination of prices. The greatly increased importance of these stores in economic life is thus doing much to thrust the problem of the just price to the forefront of public interest.

14

Prices and the Merchant's Income from External Sources; Financial Losses and the Progress of Civilization

What has been said of the determination of the prices of different goods jointly supplied applies also to cases in which several undertakings, whether individually en-

gaging in one or several lines of activity, are internally subject to a single administration while remaining separate legal entities. Such co-ordination may be due to agreements between their owners (cartels, trusts, etc.), or to the fact that all the undertakings belong to the same owner—whether this owner be an individual, a joint-stock company or other private association, or a public body. Combinations of the kind are a common, and indeed a characteristic, feature of present-day economic organization. They have arisen primarily as a result of the incentive provided by modern legislation introducing certain legal forms (especially that of the joint-stock company) for limited liability companies, which has made easier than in former times the fusion of the large amounts of capital needed by large combinations. Provided that the several undertakings *jointly* guarantee the maintenance of the owners of the whole, any one of these undertakings, whether engaging in one or in several lines of business, can be kept running even if it operates constantly at a loss.

In the same way, a business can be conducted at a loss if its owner possesses sources of income independent of it, such as securities or real property. The position of such an *entrepreneur* is analogous to that of the employee who disposes of a capital sum or an independent income of some kind liberating him, to a certain extent, from the necessity of hiring out his services. The sources of income of a public body include, besides revenues from its own property, its share in the yield of taxes of all kinds, which enable it also to carry on business at a loss if for any reason it thinks fit to do so.

The owner of an undertaking may desire to operate it at a loss, or be obliged to do so, for a variety of reasons. A model undertaking is sometimes set up for purposes of research, or simply as a hobby, and run with a view to achieving technical perfection regardless of whether it is financially a profitable enterprise or a burden. Experiments of this sort are most common in agriculture, but they are to be found in other spheres of activity also. The field of manufacture offers the example of the porcelain factories established by royalty in former times and still kept working today, in many cases, under State ownership. As regards the entertainment industry, many of the sovereigns of the German states, for instance, used to run their own theatres, either for their amusement or as a matter of prestige; and some of these were later taken over by the local authorities even though they could only be kept alive by means of subsidies. Again, social considerations may prevent a losing undertaking from being closed down: if, for instance, its closing is likely to leave its workers without any means of earning their living, the employer's sense of responsibility to the community, or the power of public opinion, may cause it to be kept running in spite of the loss involved. Finally, there is the highly significant case of the losing undertaking whose continuance is necessitated by its own momentum, as it were—that is, by the *entrepreneur's* inability to extract his capital and invest it elsewhere. The larger the amount of capital sunk in a business, particularly if it is invested in buildings and machinery which are useless or not easily utilizable for other purposes (e.g. mining plant), the less can it be said

to possess, in practice, that mobility upon whose supposed existence the classical economists based the theory of free trade. For such capital, when found to be sterile in the enterprise in which it has been invested, cannot be withdrawn and transferred to one offering better prospects.

The continued operation of a large business at a loss—even the absence of interest or dividends represents a loss for the capitalist—is somewhat easier for a joint-stock company than for an individual *entrepreneur*. The larger the number of persons among whom the capital of a business is shared, the more likely they are to be able to bear the consequences of its failure to yield any returns (especially if they have other sources of income besides the particular investment involved), and to prefer a faint hope of better times or of the appearance of a purchaser to the capital loss inevitably entailed by liquidation. A glance through the records of the joint-stock companies of any country will show how surprisingly large is the number of companies in which dividends are unknown, not only during periods of depression but even in normal times, and which are nevertheless compelled to live on because they cannot die—that is, because of the difficulty or impossibility of withdrawing the capital invested in them.

It is a fact only too often overlooked that large numbers of business undertakings, in every country of the world, work constantly at a loss. The fact tends to escape notice as a result of the practice of "writing off" losses and thus causing them to disappear from view—a practice whose purpose is to ensure that the balance-sheet shall indicate

clearly the actual position of the undertaking concerned and not represent it as being more favourable than it is. To write off losses, however, is only to remove the mention of them from the accounts; it is not to wipe out the fact that they have been incurred.

When a business is reorganized after suffering heavy capital losses, the nominal capital is usually written down to its actual value in order that the results of its activity, which were insufficient to provide interest on the original, larger capital sum, may represent a reasonable income from the reduced capital. If circumstances permit, this reduced capital can be increased again in the course of reorganization, by fresh investments up to the former amount or whatever amount is required. But were such reorganization effected without any change of ownership, the new capital being provided by the same person as the original, the owner would be deceiving himself if in reviewing his administration of his capital as a whole he were to allow present profits to obliterate the memory of past losses. A loss remains a loss until compensated by subsequent gain. Until profits from the reorganized undertaking have compensated all previous losses, that undertaking remains a losing one in this fundamental sense. Its products are sold at prices which do not correspond to the total costs of production calculated over the whole period of its activity, including that part of it which preceded the reorganization.

This being so, the question whether or not the reorganization of a business is accompanied by a change of ownership is of no great importance from the general economic point of view. If an undertaking with a deficit

is purchased at a low price, corresponding to its written-down value, its former owner is indeed saddled with the whole of its past losses. But this is a private question affecting only the two parties to the transaction. The economist who looks at the problem from the standpoint of society as a whole must include all the costs entailed by unsuccessful experiments in the cost price of the final product, just as they must be included by the *entrepreneur* who himself conducts and finances such experiments and manages to hold on until they have been completed and begin to bear fruit. It might be well worth while to conduct, from this angle, a systematic enquiry into present-day production. Such an enquiry would probably reveal that not a few selling prices, including some which suffice to bring in private profits to the manufacturers concerned, are below the true economic cost of production of the goods for which they are charged.

Where goods can be sold for less than their cost of production, their prices can be so fixed only because the individual producer and the economic community as a whole dispose of "additional" sources of income which make good their business losses and so enable them to carry on, with or without reorganization.

The pursuit of this line of thought leads to a position from which a clear view may be obtained not only of the economic, but also of the cultural significance of private capital reserves. People who dispose of surplus resources can afford to give rein to their spirit of enterprise and follow up their special interests as others cannot. They are in a position to initiate and finance all kinds of experiments—economic, social, humanitarian, artistic, and so

on—which would otherwise not be undertaken at all or, even if begun, would be likely to break down financially before completed. They thus fulfil the important function of promoting causes which, though needing financial support, have difficulty in obtaining it because they do not appeal to the taste, needs, or mentality of ordinary people.

Experiments in the artistic sphere are the first to spring to mind in this connection. But to the economic system, too, private surplus capital is of the highest importance. For progress depends upon constant experiment; risk-taking is part of the price of every new achievement. Immense sums of money must be thrown away, so to speak, upon fantastic schemes and unsuccessful or inconclusive experiments, before the boldness of some pioneer is finally rewarded with success. Lavish expenditure of this kind is one of the most important conditions of the advance of civilization.

Steam and electricity—to take two outstanding examples—could not have been brought to serve humanity as they do today, had there not been in the past persons who possessed surplus wealth and were willing to spend it on experiments and schemes regarded as hare-brained and ridiculous by their contemporaries! That pioneers in these fields would have had to wait long for the help of State subsidies is shown by the early history of the railways, which were regarded as sheer madness even by the competent engineers of the time, just as was quite recently the very idea of a dirigible balloon or a heavier-than-air flying-machine. No Government or Parliament would have risked a farthing on these "crazy" projects.

It can be stated almost as a universal rule that new inventions and productive processes must pass through a costly and often protracted period of "growing pains" before they prove their technical and economic value. Numberless inventors and innovators in every sphere of human activity have failed to make good, the fruits of their efforts being harvested by others. Yet their initial work, successful, perhaps, from the technical point of view, but commercially a failure, was an indispensable contribution to the final achievement. Rome was not built in a day. Many excursions may be needed before the right path is found, much work done in vain before the conditions necessary for success have been created. The capital and labour devoted to a failure are not wasted; they are necessary, at least in part, to subsequent success. The greater the amount of a country's surplus capital, therefore, and the larger the number of persons among whom it is distributed, the better are the chances of civilization in that country.

A State which aims at ordering the affairs of its citizens justly must, indeed, see to it that the means by which individual wealth is accumulated do not conflict with the moral code, and that the masses are protected by adequate social legislation against oppression due to the abuse of such wealth. But to obstruct unnecessarily the accumulation of private fortunes is to hamper the capitalist economy in the exercise of precisely that function which constitutes its best justification, namely, its power to contribute to the material progress of civilization.

CHAPTER IV

The Upper Limit in the Determination of Value

15

Needs and Desires; "Normal" Needs and the Just Price

THE preceding chapter was devoted to a study of the relation between the value of services rendered and goods sold, on the one hand, and the subsistence-minimum of the worker or merchant on the other. It was seen that the total remuneration of the employee or profits of the independent trader must—subject to the qualifications already considered—be high enough to ensure his subsistence, but need not stand in any fixed relation to the "cost of production" of any particular unit of labour or goods.

A person's subsistence is made possible not directly by his income, but by the commodities which his income enables him to procure. To say that a man must be able to live is tantamount to saying that the total price of the goods necessary to his existence must never exceed his "means." Clearly, however, this phrase remains a loose one until the necessities of life have been enumerated or in some way defined.

Economists make frequent use of the word "need" in order to denote any kind of desire—whether small or intense and whether morally and economically justifiable or not—for any object, whether dispensable or indispensable, and whether material or immaterial. Physical well-being, idle pleasures, aesthetic delights, and so on, are all, according to this usage, possible objects of need.

But in everyday speech the word is certainly not used, in this indiscriminate manner, to indicate any and every form of desire. A clear distinction is made, in ordinary parlance, between "neeeds" and "desires," and this verbal distinction reflects an important mental differentiation. If, for instance, a man belonging to a social group whose normal male costume includes a tie, having lost the only one that he possessed, enters a shop and buys a new one suited to his taste and his purse, he may be said to have satisfied a need. The same may be said of a person who buys a black or a white tie because, in order to conform to the customs of his society, he "needs" such a tie for a funeral or a festivity. But can a purchaser who quite arbitrarily selects some colourful specimen be said to "need" just that particular tie? There may perhaps be cases in which this question would have to be answered in the affirmative; for there are individuals so completely dominated by their sense of colour, and by a real or supposed hypersensitiveness with regard to harmony even in the details of dress, that they can sincerely declare a particular tie—in virtue of its shape, colour, and design—to be the only tie capable of satisfying their momentary needs in respect of that article of clothing. In general, however, it would be regarded as unnatural and affected

to say that one "needed" just this or that tie and no other; such a remark would provoke a smile in the ordinary person. A language usually possesses different words for the two quite distinct conceptions of "need" or "requirement" on the one hand, and "desire" or "wish" on the other.

A person *needs* food, clothing, health, a certain amount of education, rest, change, recognition, adaptation to his social environment, and so on. It should not be forgotten that he needs also some form of serious occupation: although writers on economic theory do not usually consider man's need of work for work's sake worthy of mention, such a need is undoubtedly present in most men, and is very evident at times of widespread unemployment. There are, of course, people who refuse work because they prefer idleness and unemployment relief; but happily they are in a small minority. Most men have a psychical *need* of work so strong that they would rather have a badly paid job than nothing to do at all.

This idea of *needing* always involves that of a necessity inherent, to some extent, in man's constitution; *desires*, on the other hand, are regarded as the expression of mere fancy, limited only by the bounds of human free-will. A man needs food, that is, he feels an instinctive urge to take nourishment of some sort. But for the satisfaction of this instinct he may have a choice of several kinds of food—animal and vegetable, solid and fluid, hot and cold, and so on; and his choice will be the result of a personal whim. Or again, a man needs to clothe himself, and must do so in accordance with the customs and fashions of the section of society to which he belongs.

But these standards often leave a large degree of individual freedom as regards detail, and here personal taste will decide. Indeed, the manner of satisfaction of practically all needs is determined not by any inner urge or compulsion, but by a capricious, fitful desire which, in the presence of even the narrowest range of choice, calls for appeasement in the shape of this or that particular object. When many opportunities are presented for the satisfaction of a need, as is very frequently the case at the high economic level upon which the civilized peoples of the present day are living, there is often no direct connection between this need and the commodity which is to satisfy it; the link is formed, in very many cases, by the specific desire which, arising out of the general, subjective need, is directed upon a particular concrete object.

The least observation of one's own or the average person's behaviour is enough to reveal that the direction of this specific choice or desire (economic "demand") is generally influenced largely, or even chiefly, by the prices of the commodities offered for sale. A change in the price of an article, to whatever it may be due, may indirectly cause the consumers' desire for it to grow more or less intense, disappear altogether, or arise where it did not previously exist. There is thus an indirect interaction between prices and desires. This means that the ultimate explanation of the value of economic goods can no more be found in the character of the desire for them than this desire can be explained solely by reference to prevailing prices.

The principal features of the needs underlying human desires show a large measure of uniformity. This is mainly

due to the similarity of the conditions of all human life. The conditions imposed by external nature—climate and soil, in the first place—favour or necessitate particular kinds of nourishment, clothing, and housing. Climatic and geographical conditions vary greatly, of course, from one part of the world to another, but they are uniform within clearly demarcated zones, and affect all the inhabitants of each zone in the same way. Man's needs are influenced also by his internal nature. A large part of this is the product of civilizing forces which, though expressing themselves in various forms in the traditions and customs of different societies, are the same within each. These forces act on the individual through education and the conscious or unconscious formation of habit.

Education is nearly always directed towards some end regarded, for one reason or another, as desirable. All educational principles, however widely they may differ from each other, are based upon some generally recognized ethical, political, or cultural ideal. And in the light of every ideal adopted by an educational system, certain human qualities are considered good or bad, desirable or undesirable. Wherever, therefore, a community concerns itself with education—as do the Church and the State, to take the two most outstanding examples—it consciously determines the spirit and aims of the education given, at least in their essential features, according to a single and coherent theory. In other words, education is everywhere relative to accepted norms, so that every individual can be—and usually is—judged according to the degree in which he conforms to that accepted by the community of the person passing the judgement.

This point is of importance to the theory of value.

The subjective value theories take as their starting-point the variety of individual needs, arguing that this variety is so great that the process by which the exchange value of commodities is determined cannot, since it involves the measurement of needs, be described in terms of any general laws whatever (except the psycho-physical Weber-Fechner Law of stimulus and sensation). Whether, and if so how far, these theories reject the idea of the "normal" person is not always clear. But in any case they deny it all practical significance in economic life, and in particular in the determination of value in exchange.

For the objective theories, however, this idea is of fundamental importance; although they do not give it special prominence or discuss it at length, it is an essential part of their structure. If the determinant of value in exchange is sought exclusively in the labour and expense entailed in production, the decisive influence cannot at the same time be attributed to varying personal, subjective needs; the demand side of the problem must be eliminated by the assumption of normal individual needs which, because they can be regarded as a constant quantity, may be disregarded in the explanation of changes of value. The writings of the Schoolmen, in which the basic conceptions of the modern objective theories of value first took shape, reveal clearly that the idea of the "normal" person was alive and active in their time.[1]

For analogous reasons, the idea of the "normal" person is logically inherent in that of the "just" price. For justice

[1] See above, pp. 23 f.

presupposes principles claiming general truth and general validity, and making it possible to distinguish generally between right and wrong, good and evil. A price which is just can be distinguished from one regarded as unjust only by means of generally agreed standards of judgement. The persons for whom the justice of a particular price is to be ascertained must therefore have characteristics and feelings which can be regarded as justified and worthy of respect; in other words, they must have characteristics and feelings which can be approved as the normal consequences of a normal education. On the other hand, when a person considers his needs in a given field to be normal and justifiable, he comes naturally to regard as socially unjust a system of prices which prevents him from satisfying them.

To admit the existence of needs which must be regarded as justified and normal is to admit the validity of the idea of the *justum pretium*.

16

The Training of Needs; the Optimum of Material Wealth

The determination of value in exchange is directly influenced by education in so far as this intensifies or reduces needs satisfied by goods entering into economic exchange. An intensification of such needs weakens the bargaining position of the buyer and strengthens that of the seller, since it makes it more difficult for the former to with-

hold his demand and urges him to pay higher prices for certain goods, now of stronger attraction, than he would otherwise have paid.

Werner Siemens, writing of his experiences in connection with a metallurgical works established by his firm in Asia Minor, describes an interesting example of education directed to the intensification of material needs:[1]

> "The Management of the Kedabeg works had great difficulty in accustoming the Asiatic workers to brick houses. Once this difficulty had been overcome—with the help of their wives—the very serious problem of how to find labour was solved. For this problem had been created by the insignificant living requirements of the natives, which provide them with no incentive to hard or prolonged work: as soon as they have earned enough to keep themselves for a few weeks, they give up working and take a rest! The only way out of the difficulty was to awaken new needs in them which they would not be able to satisfy without steady work. And this way was opened to us by woman's inborn taste for comfortable family life and her easily roused vanity and love of finery. We erected a few simple workers' dwellings, and succeeded in getting a few couples installed in them. The women quickly learned to appreciate their greater convenience and comfort, and the men were glad to be relieved of the work of constantly reinforcing roofs against the onslaughts of

[1] Werner Siemens: *Lebenserinnerungen*, eleventh edition, Berlin, 1919, pp. 216 ff.

rain and wind. The next step was to enable the women to procure all sorts of objects calculated to make their homes more pleasant, and themselves more attractive to their husbands. Quite soon they took to carpets and mirrors, improved their dress and general appearance, and acquired all kinds of needs for whose satisfaction their husbands had to do what they could—and in whose satisfaction they too found a certain pleasure. All this aroused the envy of the women still living in their rude caves and huts, and before long all our workers wanted brick houses, so that those already built were occupied and more had to be erected.

"I can only urge that these methods be adopted generally in our colonial policy. The man without needs is opposed to all civilizing influences. Not until needs are awakened in him and he becomes accustomed to work in order to satisfy them does he begin to respond to the social and religious appeals of those wishing to raise his cultural level. A policy which starts with social and religious instruction can yield only superficial and illustory results."

The mentality revealed by this passage rests ultimately on the assumption that a people's welfare depends on the quantity and costliness of the material goods over which it disposes. It sets the economic activity of a country the purpose of furnishing its inhabitants with as plentiful a supply as possible of objects destined to the satisfaction of their material needs. It admires an economic system according to the volume of production, the amount of goods of sufficient quality placed on the market, and the

ease and small expense with which they can be obtained by those needing them. It was the mentality of the free-traders, for they defended free trade on the ground that it was the system best fitted to give satisfaction in these respects: they argued that since, under free trade, goods would be produced where natural conditions were most favourable to their production and supplied to the consumer at the lowest possible cost, this form of economic organization would ensure the cheapest and most abundant provision of the market that the nature of things permitted.

But the welfare of nations—even their material welfare—does not depend solely upon the amount and character of their material goods. The sense of material well-being both of the individual and of the community as a whole can be strengthened not only by increasing the amount and lowering the cost of the consumable goods at their disposal, but also—and in at least the same measure—by educating and accustoming them to derive the *optimum* of satisfaction from such goods as they have. The true purpose of all economic systems, policies, and theories is to provide this satisfaction, to create this sense of well-being; and to this welfare material wealth, though one of the principal means, is still nothing more than a means.

The economic significance of this distinction between wealth and welfare is today being illustrated on a wide scale by Japan's industrial penetration of world markets. The ability of Japanese industry to offer its products at lower prices than the industry of Western Europe is due largely to the fact that the Japanese worker can subsist

on a far lower wage than his counterpart in the European countries competing with Japan. One is easily tempted, in these countries, to accuse Japan of "unfair" competition made possible by the payment of "starvation" wages. But those who know Japan are unanimous in considering this accusation arrogant and unfounded: they assert that the cultural level of the Japanese workers, and even more certainly the degree of their satisfaction with their conditions, are at least equal to those of the workers of Western Europe and the United States of America. Japan's lower production costs, they contend, are due to the *difference* of her culture from that of the countries with which she is competing. Thanks to their national culture, the Japanese are able, while furnishing a high output, to maintain themselves at less expense than their competitors upon a level of existence which satisfies their needs.[1]

It should not, of course, be concluded from this illustration that Western Europe must seek to meet Japanese competition by reducing her living standards to those of the Far East. To force down the standard of life of a community whose civilization calls for relatively abundant material equipment is not to make its civilization resemble that of a community whose claims in this respect are more modest. The depression of a living standard below the level required by a given civilization can never have the desired effect of promoting the welfare of the population concerned. If, therefore, a country's

[1] See, among other authorities, Isoshi Asahi: *The Secret of Japan's Trade Expansion*, published by the International Association of Japan, Tokio, 1934, and the European writers there quoted (pp. 59, 104 ff.).

welfare and civilization are seriously threatened by foreign competition as a consequence of the lower production costs of its competitor, its only defence lies in the field of politics (the weapon closest at hand usually being the tariff): it can take political measures to maintain prices at a level corresponding to the higher costs of its own producers.

If, however, the artificial reduction of living standards is impracticable, and in any case undesirable, this does not mean that it is impossible for people to train themselves, in certain circumstances, to more modest material requirements than those which they had previously regarded as representing a strict minimum. Such an educational process is perfectly possible. And the new mode of life may be culturally not merely equal with, but superior to the old. Both individuals and nations can learn to live more simply without lowering in the least their level of culture. Ability to make proper use of and derive real pleasure from material property depends upon the spiritual and moral qualities of the individual or society concerned. Of nations, as of persons, it can be said that the higher the cultural level attained, the more developed is the faculty of overcoming material insufficiences. The productive capacity of a country may remain constant, therefore, and yet suffice to meet the needs of an increasing population—and meet them as befits its cultural level—if at the same time these needs become less material, less expensive. A people which is obliged to manage with a given productive capacity and a given living space, that is, with a stock of goods of more or less constant volume and composition, may even succeed in

increasing the benefit and sense of well-being derived from this constant quantity by becoming more modest in its requirements and reducing its demand for material goods.

Such transformations and restrictions of accustomed needs may be provoked by some important event, and in particular by a war preventing the importation of normally necessary goods into a country whose economic life is largely dependent upon foreign trade. Thus during and after the world war certain nations were compelled to greater moderation, for instance, in regard to food and drink; and time made this moderation a habit for many of their members. What happened here was simply that the human organism was trained to make better use of the material goods in question when supplied to them in small quantities than it had made of them when available in abundance. The duration of this forced moderation, which was at first regarded as a necessary evil, was long enough so to accustom many of those concerned to plain living that a change took place in their needs. And yet, far from seeing in this simplification of material wants a sign of cultural decadence, the peoples concerned have realized that in this respect at any rate the emergency conditions of the war period led to a refinement of their cultural life. This is but a rediscovery of an ancient truth, expounded by the great philosophers and religious teachers, which always reasserts itself after periods of excessive materialism: the sure way to happiness lies not in striving for more and more material luxuries, but in simplifying the outward life.

The difference between the maximum and the optimum of economic wealth is of the highest significance in connection with the problem of autarchy, which at present occupies such an important place in the political field. The statement is made by a high authority that "the world has once more to learn the lesson that trade grows best when freed from fetters."[1] The principle here enunciated is undoubtedly quite correct in the sense that freedom of international trade would enable countries participating in it to obtain goods of all kinds in larger quantities and at smaller cost than they could by pursuing a policy of more or less complete autarchy. International free trade could certainly make the nations richer than can economic nationalism. But a quantity of material goods smaller than the maximum attainable under absolutely free trade may be of greater value than this maximum, if accompanied by a higher degree of national independence, and hence of legal stability.[2] For so long as humanity remains divided in numerous independent, fully sovereign States. and so long as wars, blockades, and similar events can disrupt it, independence of the outside world may be more advantageous to a country than dependence upon it.

The real welfare of a people is not indicated by exchange rates, wage figures, or statistics of international trade. The satisfaction of needs is not merely a question of the available quantity of goods, but also, and primarily, a question of human nature and of the physical and moral education of human beings.

[1] *Bank for International Settlements: Report 1935–36*, p. 11.

[2] See above, p. 91.

17

The Limits of the Power of Education; the Love of Money

Human nature can be trained to greater or to less dependence on material goods. But in each direction there is a limit which cannot be passed.

I.—The limit of dependence is imposed by the Weber-Fechner Law (diminishing increments of sensation from equal increments of stimulus), whose general application to the acquisition and possession of economic goods must be admitted whatever may be thought of the various marginal utility theories constructed upon it. Moral and physical training may succeed in strengthening a person's power of endurance, retarding the decline of his responsiveness to new stimuli, and thus postponing the time when complete satiety is reached and surfeit begins. But no educational methods, no amount of will-power, and no training, however rigorous, can prevent the final exhaustion of his receptive faculties.

In certain circumstances, however, the Weber-Fechner Law may be rendered practically inoperative.

In every exchange of goods it is normal for each of the parties to compare the utility to himself of the commodity which he is to give with that of the commodity which he is to receive. This comparison can be analysed fairly easily in the case of the primitive form of exchange, namely barter—the direct exchange of one commodity for another. Aristotle described the relation between exchanged objects quite simply in his *Nicomachean Ethics*

(V. 8) when he wrote that the number of pairs of shoes that must be given in exchange for a house corresponds to the ratio between the demand for the shoe-maker's and the builder's services; and he taught that this relation is fair when the exchange satisfies equally intense needs on either hand.[1] But the usual form of economic exchange is today no longer barter, but sale—the exchange of commodities for *money*. Barter is now so far from being the typical form of business transaction which it once was that modern jurisprudence generally regards it as a combination of two contracts of sale. The object to be bartered away is valued in terms of money, and this money value compared with the money value of the object to be obtained in exchange. The reciprocal money payments are then omitted by tacit agreement.

Barter of this kind is today found on a large scale in the international field, where national currency restrictions and other hindrances to trade cause States to effect direct exchanges of goods—German coal for Brazilian coffee, for instance. Although no money payments are stipulated in the agreements between the bartering countries, the valuation of the goods exchanged, upon which the terms of the contract are based, is effected in terms of money; and it is difficult to see how such transactions could be arranged otherwise. Only in exceptional cases can barter in the strict sense, that is, an exchange of goods without any resort, even mental, to the aid of money, today assume a rôle of any importance. Such exceptions may occur when, and in so far as, a serious disturbance of the financial system drives

[1] See above, p. 36.

people back, for the purposes of their everyday business, to the primitive economy or at least to conditions resembling those of that system. This happened during the Great War in the blockaded countries, and after the war wherever inflation caused currencies to depreciate so much that it became practically impossible to perform the calculations in milliards, billions, and trillions that were required even for daily purchases. These conditions compelled people, whether they wished it or not, to accustom themselves in some degree to value and compare goods without reference to monetary standards.

But just as the evolutionary phase represented by the money economy differs from that of barter or the primitive economy not only in its objective structure, but also in certain general habits of mind of the economic agents participating in it, so sale differs from barter (in the original sense) not only legally, but also as regards the mental attitude of the persons involved. For the valuation of money, which in sale, as distinct from barter, necessarily constitutes one of the objects of the exchange, is subject to psychological laws quite different from those governing the valuation of other exchangeable goods. Whereas other goods are destined for the satisfaction of specific needs—bread for food, a suit for clothing, a book for instruction, entertainment, or edification—money can be used for the satisfaction of any need, according to the choice of the person possessing it. It will buy bread, suits of clothes, books, and any other kind of saleable object or service. The *freedom of choice* that the possession of money confers has its own *special* value, which is not present in other goods.

This peculiar power of money is indeed inoperative in the unusual case of a person who devotes almost his entire financial resources to the acquisition of a single commodity. An extreme example of such use of money is offered by the drinker, whose constant preoccupation is drinking and in whom the sole desire aroused by the possession of money is to buy alcoholic drinks. A person of this kind neglects all except his dominant desire; his needs in respect of all other goods are stunted. He measures the value in use of his money by the standard of his morbid need for alcohol. In so far, therefore, as the Weber-Fechner Law causes this need to decline in intensity as it is met (and ultimately to reach complete satiety), the value which the drinker attaches to money must decline also. Money is directly associated, in his mind, with this particular commodity, so that his psychological reactions to the former are conditioned by his attitude to the latter.

More complex, but essentially the same, is the common case of the person who is obliged to employ his entire income for the satisfaction of his elementary needs, and who must therefore spend it very prudently, distributing it with the greatest possible care among the various necessities which it must be made to procure for him. Here too there is a clear and conscious relation between the valuation of money and that of the articles which the money is to buy; in and through the money is seen the value in use of the consumable commodities. If the person's income is increased and the additional money is used exclusively to purchase more food, clothes, household requisites, and so on, no other use for it being

envisaged than the more extensive purchase of the same commodities, then the law of diminishing utility will apply to his financial resources just as it will to the commodities to which they are the means.

In cases such as these, the commonly held view, well formulated by Friedrich von Wieser, is absolutely correct: "the value in exchange of money is the anticipated value in use of the commodities to be purchased with it; the law governing the latter, therefore, governs the former also; both are determined by supply and demand as expressed in marginal value."

This principle, however, holds good only where the notion of a given sum of money is in fact associated (perhaps only vaguely) with that of particular material objects to be bought with it, and with their value in use. This association begins to dissolve as soon as a person starts setting aside part of his income not with any definite plans for the use of his savings but simply in order to possess more money, and without even knowing, perhaps, whether he will ever spend it at all. The transformation that takes place in such a case in the person's mental attitude to money is highly important. Very often indeed the acquisition and possession of money are means not to the purchase of exchangeable goods or services, but to the satisfaction of psychological needs. Money is desired in order to build up and maintain a number of emotional values—the most important of which are the feelings of independence and freedom from anxiety—which, though their existence presupposes the fulfilment of certain material conditions, are themselves without price and cannot be bought and sold.

Experience shows that in such cases the diminution of the attraction presented by money is so gradual and so small as to be almost negligeable, and that the intensity of the desire for financial gain can remain practically constant. While, therefore, it is wrong to regard economic life as dominated by a general striving after maximum gain,[1] it is equally wrong to ignore the fact that money is a commodity whose acquisition and possession can be increased indefinitely without necessarily resulting in surfeit.

When barter was the usual form of exchange, the desire for gold and money must have seemed an ugly, morally objectionable trait. For these things were then, much more than they are now, used merely as a means to sensuous enjoyment. The *auri sacra fames* was rightly regarded as a sign of unbridled lust after pleasure, and also, since narrow limits were set to the enjoyment of the coarser pleasures, as ultimately purposeless and foolish. This view was the more justified as economic security and political power depended, in those days, far more on the ownership of land than on that of money, whose conversion into securities and other forms in which it is easily negotiable and relatively easily guarded is only of recent date. Ethical doctrine has gradually ceased to disapprove and despise money as such. It judges the acquisition and possession of money primarily according to the use to which it is put. But this may be ethically good as well as bad. The power of money can be made to serve high philanthropic causes, the promotion of the general well-being, and a thousand excellent and

[1] See above, p. 78.

unselfish purposes, just as well as evil and anti-social designs. There is nothing good under the sun which cannot be misused. Money itself is neither good nor bad; the nature of its influence depends upon the will of the person who disposes over it.

II.—The limit of independence of material goods lies in the fact that men's material needs, however they may be reduced and repressed, can never be wholly eliminated. The subsistence minimum may be abysmally low, but it cannot be forced down to zero. Man cannot live on air; his body makes certain imperative demands, based on minima set by Nature herself, in respect of food. It also requires a minimum of clothing, at any rate outside the Earth's tropical zones, however low the general standard of life may be. The various levels of civilization create further, more refined, intellectual needs—such as the need for instruction—which cannot be wholly met without material means. If man and human civilization are not to die, therefore, an upper limit must be set to the prices of certain goods. The prices of these goods must be kept within the reach of those who need them. When it is said that a man must receive at least a given minimum income in order to be able to live, what is meant is not only that there must be a lower limit to the prices that he receives for his goods or services, but also that there must be an upper limit to the prices that he must pay in order the obtain the material necessities of existence.

Just as no one is prevented, in the normal course of things, from working for nothing or giving goods away, if his situation permits it—that is, if he has sufficient

sources of income other than the hire of his labour or the sale of his goods—so no one is really *obliged* to work at all for remuneration, however high, or to part with his property, however much may be offered him for it. If his mind is made up, and if his economic position enables him to spurn remuneration of every kind, no demand, whatever its strength or the purchasing power behind it, and no offer, however "tempting," can force him into any sort of business transaction. There is no limit to the prices of the goods and services of such a person; they may reach absolutely unattainable levels.

It is possible, however, for goods to be marketed permanently at a price higher than that which would obtain if demand depended only on the needs of the consumers. The purchase of goods can be forced even upon persons who quite clearly do not want them in the least. The mercantile period offers examples—few, but by no means so few as to be exceptional—of the compulsory purchase of certain commodities by the wealthier sections of society at the order of the Government. In the time of Frederick the Great, for instance, merchants of Königsberg who desired to trade with Poland in foreign silken goods were obliged to buy 50,000 thalers' worth of Prussian silken goods annually, while Jews wishing to marry had to buy and export 100 thalers' worth of porcelain from the royal porcelain works. The fact that such measures of compulsory purchase have been somewhat rare, and usually short-lived, does not prove the impossibility of maintaining them permanently. The persons who complied with

the measures just referred to were able to do so because their resources sufficed, despite the involuntary expenditure, to satisfy their subsistence needs. Upon anyone possessing such resources, forced purchases can be imposed as easily as taxes; and just as any tax can be maintained despite the burden that it places upon economic activity, so can a system of forced purchase, though it have the same effect, be perpetuated indefinitely. Such a system is, in fact, nothing but a tax in disguise. The apparent truism that no branch of production can possibly persist unless there is a need for its products must thus be accepted with a certain caution; for it is quite possible for a branch of production to be kept alive in order to meet no other need than that of the State (or of some other producer with sufficient power) for money.

Nor are measures requiring the purchase of particular goods or the hiring of particular services adopted only in connection with interventionist policy. They are found also in absolutely liberal societies, only here it is not the public authority but private economic groups that compel persons dependent upon them in some way—sometimes whole categories of persons—to part with their money for things in which they have no interest, or even to which they are averse. This compulsion takes many different forms, varying from open coercion to moral pressure so slight that it is hardly possible to determine whether the demand following it is forced or spontaneous. It happens not infrequently, for instance, that a political or professional organization induces persons dependent on its favour to subscribe to a period-

ical in which they are so little interested that they leave it unread or cast it indignantly into the waste-paper basket. An outstanding example of general significance, which proves the possibility of forcing the sale of unwanted commodities, is provided by the truck system —a system which has long been in operation in just those countries in which the principle of non-intervention by the State in economic life has predominated. Under this system both factory and home workers are obliged by their employers to buy from them all sorts of commodities which they do not want, the prices being deducted from their wages, or to buy the materials and tools needed for their work from their employers or their agents at higher prices than they would have to pay elsewhere. For the workers, the practical outcome of this system is a reduction of their wages; but they can bear it if and so long as it leaves them an income on which they can subsist. An upper limit of prices is required only in respect of the *necessities* of life.

Subject to this condition—that sufficient resources are left to the individual to enable him to subsist—the prices of all commodities which are not strictly necessary to the satisfaction of vital needs can be maintained at whatever level suits the policy of the economic power-group concerned, even if this level is above that corresponding to the consumers' need. Only if the prices of *necessary* goods (e.g. bread and other staple foods) tend to rise to unattainable heights does the law already discussed[1] become operative, setting an upper limit to prices and a lower limit to income. Whenever this

[1] See above, p. 119.

tendency sets in, however, the action of the law in question is inexorable. And it is accompanied by a reaction of Man's instinct of self-preservation. It causes him to call upon the authorities for measures of price-control to anticipate the hunger, distress, and possible violent destruction of the legal system, which must otherwise be expected to result.

CHAPTER V

The State and the Just Price

18

Exploitation in Business Contracts

There are various ways in which the State seeks to promote justice in the determination of prices. One of these is by prohibiting certain types of transaction which violate the accepted moral code, or permitting legal remedies for the redress of the consequences of such transactions when concluded. The State allows or compels the judge, in certain circumstances, to substitute for the price agreed upon by the parties to a contract a different, *just* price—or at least a price *more* just than original. The emergence and evolution of the legal principles here applied have been considered above, in broad outline, with special reference to the history of Roman law.

These principles found their first expression in the establishment of the right to contest the terms of business contracts in the courts, and the correction of prices whose determination was affected by fraudulent misrepresentation; and later, the correction of prices whose determination was affected by gross error at the time of the conclusion of the contract.

A great extension of this kind of legal regulation took place in connection with *usury*. Interference in the freedom of contract for the purpose of preventing usury was originally restricted everywhere to the sphere of interest rates on loans. Later, however, measures were adopted in some countries to prevent "usurious" practices not only in this sphere, but throughout the whole field of business. When such a practice was found to fall outside the legal definition of usury, it could sometimes be brought within the jurisdiction of the courts on the ground that it violated the general principles of morality.[1] The particular business transactions and price agreements which were held to be *contra bonos mores* and to be susceptible, accordingly, of compulsory cancellation or modification, differed very widely from country to country and from one epoch to another. But the more the principle found acceptance that the State has the right and duty of intervening to protect the weak against the strong in economic life, the more elaborate and refined did the legal conception of *boni mores* in that sphere of activity tend to become. And within each community governed by a more or less uniform code of behaviour, there was usually a large measure of agreement upon the essential features of this conception.

The motive of the State in seeking to protect the weak is not always, however, a purely ethical one; quite often it is the political consideration that the State in question *needs* its weaker members. This political aspect of the

[1] The German civil code, for instance, includes "usury" among the practices which are *contra bonos mores*, and declares "usurious" contracts to be null and void for this reason.

promotion of the *justitia pretii* increases in prominence as the attempt is made to combat unjust prices not only in cases in which the parties to particular contracts are injured as a consequence of fraud, gross error, usury, etc., but also in cases in which the *whole community* needs to be protected against exploitation. For the latter type of case, some modern jurists have introduced the conception of social as distinct from individual "usury." Whereas individual "usury" consists in the exploitation of individuals, social "usury" is a parasite on society as a whole. Social "usury" impedes the provisioning of the community, making necessities difficult to procure by forcing up prices, directly or indirectly, to exorbitant levels. Even in ancient times—particularly times of war—measures were sometimes taken to combat social "usury." Caesar, for instance, found it necessary to promulgate a comprehensive law (*lex julia de annona*) imposing severe penalties for artificially raising the prices of foodstuffs (speculative buying, delaying grain ships, etc.). In the Middle Ages the Church made a point of attacking systematically both individual and social "usury". And at the time of the French Revolution the National Convention, despite its enthusiasm for liberty in every sphere, was obliged by rising prices and deepening distress to adopt measures restricting economic freedom, particularly with regard to the fixing of the prices of necessary foodstuffs. Difficult periods have always and everywhere given rise to emergency measures of this kind, just as the return of normal conditions has always and everywhere been followed by their withdrawal.

The most recent examples of price-control on a large scale are offered by the post-war period. Many States suffering from the consequences of the war attempted, by means of maximum prices and highly complicated administrative and legislative measures, to prevent the exploitation of the general distress through artificial price-increases. The most long-lived of such emergency measures have in many cases been those relating to excessive house-rents. These were adopted as a consequence of combined action by tenants, who organized themselves for the defence of their interests and appealed to the State to reduce rents compulsorily below the level that would obtain under conditions of complete freedom, that is, under conditions leaving landlords free to make full use of their stronger economic position.

In those systems of legislation in which the conception of "usury" has been extended as just described, its distinctive mark is and has nearly always been considered to reside in the relation between the particular objects or services exchanged. A price is regarded as "usurious" if it exceeds the level necessary to yield a reasonable profit on the particular article for which it is charged. The deciding factor is the amount of profit earned on a given unit of goods sold.[1] In practice, however, and particularly in the prevention of social "usury," two very difficult problems have arisen: firstly, how is it to be decided whether, in a given concrete case, a rate of profit (ascertained in some way) is legitimate or excessive and "usurious"? and secondly, in view of the difficulties—almost insurmountable even from the purely

[1] See above, p. 55.

technical point of view—arising from the complicated character of the factors involved under modern conditions, how is the judge to settle the preliminary question of the manner in which profits are to be ascertained?

The solution of these problems has often been sought in the simple expedient of fixing maximum prices, maximum interest rates, and so on, and penalizing anyone found guilty of exceeding them. Another equally arbitrary method is to regard as "usurious" any contract in which profits exceed costs of production by more than a stipulated percentage. Here, however, the judge is still left with the sometimes extremely difficult duty of ascertaining costs (including overhead charges). This method, in fact, consists in empowering the judge to fix the right or just price arbitrarily, according to his own approximate assessment of the elements involved in the particular case before him.

In the administration of the German law the discretionary powers of the judge were limited by the decision of the Supreme Court, which took infinite pains to define the legitimate costs of production of an article (including purchase price, brokerage, risk-premium, overhead charges, and other calculable expenditure). The anti-profiteering legislation of the war and post-war periods —which is still in force as regards rent—did indeed lay down that account should be taken of "the general situation of the person involved" in determining whether or not profit or remuneration was excessive in a given case. But the Supreme Court clung obstinately to its principle of separate cost assessment, insisting pedantically that profits must be calculated with reference to

units of commodities or services. And the sole outcome of all its painstaking and meticulous work was that the practice of the courts, and of the official organs responsible for the supervision of prices, came into more and more open conflict with the requirements of business and the sense of justice of precisely those members of the business world who represented its most honest and respectable element. Indeed, a very competent member of the Supreme Court has himself declared that the serious disorganization of economic life which would have resulted if the Court's principle had been applied strictly was avoided only by the refusal of business to pay much attention to its decisions.[1]

But the view that whole sections of society need general protection against excessive prices (or insufficient remuneration) leads far beyond the bounds of special war-time or other emergency measures for the suppression of "social usury." It embraces an important part of the complex of problems usually referred to as the "social question." The feeling of being exploited, for instance, which impels the worker to struggle for a "fair wage," is simply a reaction against usury in its wider sense.

The workers as such represent a section of society to which prices (wages) are paid; the defence of their interests consists, therefore, in raising and holding the rate of remuneration up to the just minimum. The tenants, on the other hand, represent a section of society which pays prices (rent); their interests are defended

[1] A. Zeiler: *Der zulässige Verkaufspreis nach der Preistreibereiverordnung*, 1922, p. 31.

by measures lowering them or keeping them down to the just maximum. But in both cases it is clear, in the light of the foregoing analysis, that justice cannot really be achieved unless the prices (wages or rents) are considered not only in relation to particular units of service or lease, but also in relation to the aggregate income of the persons concerned, whether these be workers receiving wages considered insufficient or tenants paying rents considered excessive. A given wage may be just for a worker having other important sources of income and unjust for a worker with no such sources; and one and the same rent may be just or unjust according to its relative importance in the tenant's budget.

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Unfair Competition

The preceding section was concerned with imperfections in the process of price-determination due to failure to observe the proper proportion between the object or service furnished and the sum paid for it. Such imperfections, which were seen to call for State intervention, arise out of the relations between the parties to a business contract (seller and buyer, landlord and tenant, employer and employee, and so on). But when once the idea is accepted that the State has the right and the duty of safeguarding the price-fixing process against influences which run counter to the views of right and wrong, good and bad, commonly applied to the field of business,

it is only a step further—and an unavoidable step—to the position that the State should supervise the relations not only between contracting parties but also between competitors. The harmful influences which may arise in this second field are usually referred to under the general head of "unfair competition."

The idea of unfair, as opposed to that of fair, decent, honest competition, is found in other spheres besides that of business, and arose long before economic life had come to be conducted on the basis of exchange at all. It arises from man's deeply rooted sense of the distinction between fair and unfair, permissible and forbidden methods of fighting. The idea of the "honourable" form of combat dates from very early times; it played an important rôle in the development of the rules of duel, and today constitutes an essential element in the popular sporting conception of "fair play." However widely the details of actual practice may vary, the principle is now firmly implanted in men's minds that every combat should be waged according to rules determined by the general sense of what is fair and right, and enforced, when necessary, by an impartial umpire. A combatant may not avail himself of every advantage with which chance or his superior strength or skill could provide him, but only of those whose use is permitted by the rules.

The idea of fair play between business competitors thus represents the application to a particular human activity of a general sense of the need for regulation in combat of every kind. Here, as in the field of sport, fair play means not only the elimination of methods of

violating the generally accepted notions of honour, but also, in certain circumstances, the renunciation of the use of advantages with which one or other party has been provided quite naturally and lawfully. Fair conditions in a sporting event must sometimes be created by the partial or total neutralization (starts, handicaps, etc.) of differences in the strength of the competitors. Similarly, in the economic field, measures are sometimes taken to reduce serious inequalities between competing forces: the stronger party is burdened artificially (e.g. with special taxes), or the weaker party aided by means of subsidies or other advantages.

In the townships of the Middle Ages, and even in the State economic systems of the mercantile period, business competition was everywhere so carefully regulated that excesses and abuses were practically impossible. When these restrictions on production and trade were removed, however, the situation changed radically. Economic freedom did indeed fulfil, to a large extent, its purpose of enabling the more competent—and in this sense the best—members of each trade to outstrip their less capable fellows. But by leaving the competitors free to choose their means of combat it threw open the door to unscrupulous dealings. Misleading advertisement, the fraudulent use of trade marks, and fraudulent practices of every conceivable kind sprang up and flourished, threatening the prosperity of the more honest merchants.

The reaction to this licence was not slow in coming; quite soon the States concerned began to take steps to curb at any rate the more serious excesses of business competition.

The legal conception of unfair competition was created by French jurisprudence. Section 1382 of the *Code Civil* lays down that "any person who, by any of his acts, causes injury to another, shall repair such injury." A series of special laws, passed in the course of the nineteenth century, dealt with particular practices falling within the scope of this provision by means of prohibitions and the prescription of the payment of damages to the injured party. The example thus set by France was followed by other countries, including England, the cradle of free trade and at that time the model of this form of economic organization. Of special interest is the German Act of June 7, 1909, which codified that country's legislation on unfair competition. This Act created for Germany a system of legal safeguards similar to that which had grown up in France. It laid down the general principle that anyone engaging in business who was found guilty of activities conflicting with the principles of morality might be made to cease such activities and pay damages to the injured parties; and it introduced not only civil but also penal sanctions for a number of particular forms of unfair competition, including fraudulent advertisement and sales, the corruption of employees, the misuse of trade names, and the betrayal of trade secrets. In addition to this Act, various special measures for the protection of trade marks have been adopted. The German legislation as a whole, as interpreted and enforced by the courts, has undoubtedly made a valuable contribution to the improvement of standards of conduct in business in that country.

There is a close relation between legislation for the

prevention of unfair competition and legislation for the protection of literary and musical rights (copyright) and inventors' rights (patent). The resistance which had to be broken down, however, before the idea of protecting inventions and literary and musical property found acceptance, was even stronger than that opposed to the idea of preventing unfair competition in other fields. For here the advocates of free competition could point not only to the general arguments ordinarily advanced against State intervention, but also the requirement of society's special and eminently cultural interests, that inventions and literary and musical works should not be made more expensive by monopolies and privileges, but rendered as easily available as possible. The cultural interests of society as a whole, they contended, must take precedence over the financial interests of individual inventors, authors, composers, and other creative artists.

The sponsors of protective legislation, on the other hand, based their case on the considerations of business honesty which had led to the restriction of unfair competition in other fields and which, they said, required the generalization of protective measures. They pointed out that such measures were much needed by inventors and authors, who were often deprived by third parties of the reward due to them for their work.

In former centuries, the realization that people would have little or no incentive to engage in creative work, which is often both exhausting and expensive, unless they could count on deriving benefit from it, and the justice of the ethical argument in favour of the protection

of creative artists against exploitation, led to the grant of monopolies and privileges of various kinds. Originally, these privileges were regarded as exceptional acts of grace by which the authority conferring them rewarded the performer of a useful service. The French Act of January 7, 1791, however, placed patent rights among the general "Rights of Man," giving the inventor a legal claim to the commercial exploitation of his work. And subsequent legislative developments, which included the introduction of copyright, were guided by this conception. The legislation of most countries effected a compromise between the interests of society and of the inventor or artist, by giving full protection to the latter through patent and copyright while limiting the duration of this protection by providing for its withdrawal after a certain lapse of time.

The degree in which the prevention of unfair competition in all its forms is demanded by modern conceptions of law and social justice is shown not only by the volume of national legislation on the subject, but also by the fact that much of this legislation has now been given international validity, while the more advanced countries are devoting constant attention to the reinforcement and extension of international protective measures.

It is the collective rather than the individual aspects of the question of unfair competition as of that of usury and other forms of exploitation that bear most directly upon the problem of the just price. It is where the prevention of unfair competition is concerned not merely with cases in which one member of a profession

injures the interests of another, but with general conflicts of interests, particularly between whole professions or countries, that it is most relevant to the subject under discussion in this book. The following pages will deal with the notion of the just price as it presents itself in these collective conflicts.

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The Impossibility of State Neutrality

Laissez-faire, which rejects the principle of State intervention in economic affairs, is rooted, no less than other economic doctrines, in the ancient formula "*justitia fundamentum regnorum.*" But the free-traders believe that economic life is governed by its own inherent laws and that man and the State must bow to them as to natural law. They hold that these laws are the expression of a justice higher than human, namely that of nature. If free competition in the economic sphere results in the survival of the strong and the defeat and elimination of the weak, this is in accordance with the designs of the Higher Powers, whose desire it is that the weaker individuals should be sacrificed for the sake of the development of the *species*.

The advocates of economic freedom were indeed moved less by ethical ideals and the desire for justice than by the political and economic consideration that freedom of production and trade was the surest guarantee of material progress. But they were convinced that

their policy was just, as well as expedient. For they held that all men were born equal and had equal claims upon the State. And just as the goddess of justice should be blindfolded in administering the law, in order that she may not be influenced by personal considerations but treat all appearing before her on a footing of absolute equality, so, they argued, should the State observe an attitude of complete impartiality with regard to the economic activities of its subjects. All intervention in economic life tended inevitably to disturb this condition of equality between those participating in it, and to lead —though sometimes, perhaps, indirectly and unintentionally—to the creation of special conditions, both preferential and prejudicial, which would not otherwise have arisen. Only if the State held itself aloof from economic life could it avoid the danger of partiality.

No matter how much the State tries to abstain from political interference in the economic life of its citizens, however, the fact remains that every one of its economic operations must inevitably affect this life. As was shown by the analysis, made on an earlier page, of the process by which costs are passed on, each such economic operation of the State has its own direct or indirect effect upon the prices of goods and services. And since some group or other is bound to consider itself injured by these price-changes, the question will necessarily arise whether the operation was just or unjust in its repercussions.

When, for instance, the State proposes to construct a railway for the benefit of society at large, numerous and often serious conflicts of interest arise among those likely to be injured or desirous of being benefited; and

these conflicts can be settled only by the decision of the State. But in making its decision the State can hardly avoid benefiting one party more, another less, and a third, perhaps, not at all; it may even have to benefit one party and injure another. Even the choice of the route to be followed by the line may involve the vital interests of private citizens. The selection of the towns and villages through which it is to pass, and of the site of the station in each town and village, may cause great increases in the value of land and buildings in certain neighbourhoods, and even provide a powerful stimulus to some of their trades, while bringing depreciation and poverty to other neighbourhoods through which the line does not pass. The construction of a railway may lead to absolutely unforeseen changes of a revolutionary character, reaching far beyond the regions directly affected. For the improvement of means of communication and transport produces repercussions in two directions: it enables hitherto remote districts to place their products on external markets, thus extending their sales; and it throws open the internal markets of these districts to outside producers who, by providing wares of a better quality or at a lower price, may undermine the position of the local producers.

As is shown by the expropriation laws of most countries, it is not considered desirable or right that the State, in coming to decisions on questions such as these, should simply ignore the injuries done to the interests of private citizens. This legislation usually permits or obliges the State to compensate persons injured by any measures that it may take—at any rate when the injury

is direct. But the harmful effect of State measures may be passed on, by the process already examined, so as to extend far beyond the circle of those legally entitled to compensation. And *all* the parties injured, however indirectly, may and generally do regard as unjust the use by the State of their tax payments for schemes which benefit only others; tax-payers, they claim, should all benefit equally by the State's expenditure.

The different principles involved in these conflicts of interests have received their fullest treatment from economists in the discussion of the arguments for and against protective tariffs.

One of the principal arguments advanced against protection is that every system of protective duties is rendered harmful by the mere fact that it inevitably sets the different manufacturing and trading interests at loggerheads with one another. The very prospect of a protective tariff stirs up strife. The question of the protection of agriculture, for instance, has long been one of the most hardly used bones of contention. When a duty is imposed upon the importation of grain in order to make agriculture more remunerative for home farmers, the remainder of the population feels itself threatened with increases in the prices of bread and other foodstuffs. Moreover, the farmers can derive the intended benefit from the duty only on the condition that similar duties on industrial products do not so increase the price of agricultural machinery as to cause them to lose, in purchasing such machinery, as much as they gain from the increased value of their sales. The same applies to the protection of industry. Tariffs on

iron, enabling home foundries to charge higher prices for their products, will be considered harmful by their customers, the manufacturers of machinery, and by the buyers of the machines, which will have become more expensive. Similarly, tariffs on yarn, safeguarding home spinners against foreign competition, will be regarded by the weavers and their customers as injurious to their interests.

In the later stages of this process of handing on costs, the immediate effects of a tariff may indeed be neutralized, or even reversed. It is possible, for instance, for an increase in the profits obtainable from farming, and the accompanying increase in the agricultural community's purchasing power, so to improve the market for the products of the other sections of the population that all become resigned to the higher prices of bread and other foods and pay it without being the worse off. But it may also happen that the demand for agricultural products (cereals, meat, milk, etc.) proves more elastic than had been supposed, and that the increased prices, by leading to a reduction in the volume of sales, deprive the duty of its intended effect of increasing the farmers' profits.

Whatever may be the precise repercussions of any particular measure, it is certain that every protective duty must provoke conflicts of interest between different sections of the community concerned. These conflicts, moreover, tend to poison public life in a most serious fashion. For every political dispute becomes more bitter and more dangerous in the measure in which private interests are involved in it. Where such interests are at stake, the

struggle for political power is at the same time a struggle for the opportunity to use the State for the private gain of a few, at the expense of the rest of the citizens. And the temptation is great, in a struggle of this kind, to cover mere personal interests with the cloak of patriotism, representing them as the true interests of the nation.

The economic difficulties and political dangers to which private conflicts over tariffs give rise have sometimes, as in Germany at the time of Bismarck, led to a demand for a general system of duties, protecting *all* branches of home production, without exception or differentiation, against powerful foreign competitors. If such a system is to fulfil its purpose, however, its elaboration must be accompanied by a careful weighing of the various divergent interests of home producers and a careful calculation of the amount of protection to be given to each—both of which tasks clearly present almost insuperable difficulties. And even if success were achieved, and a technically perfect and absolutely general system introduced, the duties would still apply directly only to those branches of home production which were really in competition with the foreign producers.

These direct effects are limited to material goods. Even the labour of the wage-earning and salaried employees occupied in the protected industries will derive only indirect benefit from the duties, in so far as the increased income of the undertakings employing them results in increases in the remuneration of their staff. The extent to which this result will follow depends, like all questions of price-shifting, on the strength of the various economic factors involved. The relative strength

of the opposed groups of employers and workers may be such that the benefit provided by the duty remains largely or entirely with the former, or it may be such that it is passed on entirely to the latter or to another group (e.g. furnishers). In any case, groups which do not receive a share—or a sufficient share—of the benefit of the duty are obliged, in buying products of the protected industry, to pay the higher prices resulting from the protection without having obtained a corresponding increase in their own earnings. The groups most likely to find themselves in this position are those working in occupations not protected by the duties, particularly members of the public services and the liberal professions. Wherever the State intervenes to protect any section of the economic community it tends inevitably, whether it wishes to or not, to affect a number of different groups, and to affect them all quite differently.

This being so, the question is sometimes asked whether all the interests to be considered could not be reduced to a common denominator and brought into harmony by treating the members of society not as producers but as *consumers.* Since the primary aim of all men is to live, all desire to procure at least enough consumers' goods to maintain them. All, therefore, have a common interest in the provision of these goods at the lowest possible price. Do not their interests as consumers, then, constitute a more natural and important aspect of their economic significance than their varied interests as producers?

This conception of the common interests of consumers, which is playing a quite important rôle in present-day economics, occupied a dominant position in the classical

doctrine of free trade. Free competition was held to be desirable because it offered the best guarantee that every market would be supplied at the lowest possible price, as the interests of the consumers demanded. The world economic depression which began in 1929, however, gave an impressive warning against the danger of regarding the reduction of prices to the lowest possible level as the sole justifiable aim of all economic policy. For though the fall in the world prices of all raw materials was followed by declines in those of most other goods, this general downward movement of prices did not raise the standard of life of the consumers. On the contrary, by causing a reduction in profits it threw the producers into conditions of distress into which the consumers were then drawn with irresistible force. The terribly dangerous character of the world depression was due precisely to the *downward* movement of prices. The purchasing power of the consumers declined in just the measure in which production suffered from this movement. It was clearly revealed that the supreme aim of economic policy can no more be found in the mere reduction of prices in general than in their maintenance at a high level. The purpose of economic life cannot be defined by such simple formulae as these.

The harmony of the interests of consumers is an illusion if it is thought to exist already, and unattainable as an ideal. For although every consumer, as a buyer, wishes to be able to buy cheaply, he is at the same time a seller, either of goods or of services, and as such wishes to sell dear. Even a person living exclusively on interest on capital, accruing at a fixed rate, who at first glance

appears to be consuming only and producing nothing at all, has really a seller's (investor's) desire to obtain an income at least sufficient to maintain him. And even a person who lives entirely on the support of others is interested in the maintenance of wages (or prices) at a level which will provide the workers or merchants on whom he is dependent with an income enabling them to continue their support. Since, therefore, every consumer or buyer has one foot somewhere or other in the producers' or sellers' camp, he is *eo ipso* involved in the battles that are waged between the different factions in that camp.

The State cannot evade the necessity of taking up a position with regard to these conflicts of interest in the economic life of its citizens. For nothing can alter the fact that a policy of non-intervention, no less than one of the most positive intervention, benefits some citizens and injures others. The State is prevented by its very nature from adopting the apparently convenient solution of absolute neutrality. It has no choice between intervention and non-intervention. It has only to decide *which* interests it will support, promote, or handicap.

The question that next arises, then, is: what interests can claim to be of vital importance to the State?

21

Professions and Trades of Vital Importance to the State

The economic interests with which the State has to deal are usually those not of individuals, but of whole pro-

fessional groups, for it is between these—the economic significance of differences of birth having almost disappeared—that economic struggles are conducted in the modern world. Just as the State forms the connecting link between the individual and the world economic system, so the trade or profession plays its own special and responsible part in the national community by acting as intermediary between the individual and the country's economic system as a whole. And it is confirmed in this function wherever the State gives the members of a trade the right to combine for the defence of their common interests or itself sets up corporative organizations and gives them the character of public bodies.

The individual citizen, in defending his interests before the State, bases his case upon the value of his services to his country, the contribution that he makes to the common good. Similarly, the claims of a trade or profession are to be examined with reference to its special importance, *as a group*, to the whole of society. This involves the question of the standard by which its importance is to be measured—that is, of the *kind* of importance which is to be regarded as justifying State protection.

Wherever conditions of free competition prevail, a person who brings his goods (or services) to the market at less expense than his competitor is in a position, other things being equal, to sell them more easily than he. If the less successful competitor cannot recover the ground lost, his wares disappear from the market, and if he was dependent for his livelihood upon their sale, the only course open to him is to seek another occupation.

There is no place, in the doctrine of free trade, for the idea of the necessity, from the economic standpoint, of maintaining people in their callings by special State measures. The reduction of the price of a commodity, by the interplay of supply and demand in the free market, to a level at which some member of the trade concerned is no longer able to continue in business, is a signal given by the economic system that that member of the trade has become superfluous, whether by his own fault or not. And where this process results in the ejection from a given trade not of one but of all its members (e.g. when the competition of mechanical mass production ruins all the handicraftsmen of a given branch), the economic system is held by the free-traders to have furnished proof that the existence of that trade is no longer justified. The *laissez-faire* economist advises anyone who finds himself unable to live by the exercise of his trade to look for another; and there he leaves him, confident that his natural self-interest will crown his search with success. He teaches that if the State leaves the course of events to be determined "naturally" by individual interests, everyone who ceases to be able to earn a living in his accustomed occupation will decide, whether gladly or reluctantly, to enter another, and will in due course succeed in doing so. Such transfers are evidence of the natural and healthy functioning of the economic organism, and ensure that the useful members of society shall in the long run be fitted into their proper places, and the useless be eliminated. A natural process such as this must not be regarded sentimentally. Human society, like the human body, calls sometimes for a

surgical operation, and the surgeon must not be afraid of causing pain or removing limbs if obliged to do so by the patient's condition.

The abolition of trade restrictions was intended by the legislators to permit the free movement of individuals between the different trades and professions, as required by the "natural" theory just described. In practice, however, this liberation has proved itself incapable of ensuring, as it was expected to do, the selection of the fittest. For even when every individual is "free" to choose and exercise whatever trade suits him, and to move from one to another at will according to the prospects of gain as they appear to him, there are in fact so many hindrances to the use of this freedom that for a large part of the population—indeed, for the majority—it exists only on paper.

These practical obstacles to the use of the legal right of free movement from trade to trade, which in many cases are quite insurmountable, consist on the one hand of hindrances to the adoption of new trades, and on the other of hindrances even to the abandonment of an accustomed trade.

The principal difficulties of the first type are those which arise from natural inability to satisfy the requirements of the desired trade in respect of age, sex, physical condition, muscular strength, or mental or emotional qualities. Such disabilities may restrict considerably the range of choice of persons seeking new trades. Although these difficulties are due to personal characteristics, they are far from having significance only for isolated individuals. They may apply to whole sections of the economic

community. The suggestion is sometimes made, for instance (in accordance with classical principles), that the surplus workpeople of the towns should be encouraged to settle in large numbers on the land, and go in for farming. Experience shows, however, that such schemes generally meet with only very partial success. And the reason for this is that very many urban workers are unable, however willing, to adapt themselves to the requirements of the new occupation urged upon them; the conditions of urban life render them, like town dwellers in general, incapable of running an agricultural undertaking efficiently.[1]

Particularly restricted is the entry into skilled trades requiring not only special personal qualities but also special training, perhaps lasting several years, which costs more time and money than the candidate has at his disposal.

The greatest obstacle of all, however, from the sociological point of view, which under modern conditions prevents men from choosing their trades freely, is the fact that the *independent* exercise of a calling generally requires a considerable amount of capital or credit. The more money is needed to set up a business in any particular branch, the fewer people can hope to enter that branch otherwise than as employees. A large modern mining undertaking, for instance, calls for more capital than even the wealthiest individual is generally in a position to supply alone. Such undertakings can usually be financed only by combinations of persons who jointly procure the necessary funds by obtaining loans or issuing

[1] See below, p. 197.

shares, or by some similar procedure. Moreover, although the obstacle presented by finance is most evident in the sphere of large-scale production, it is essentially the same, even if the sums involved are smaller, in nearly all independent trades. A man needs money in order to open and stock a small shop or workshop and pay for the necessary minimum of advertisement.

The smaller the possessing class in a society is, therefore, the greater is the number of citizens for whom the legal right to the free choice of a profession is without any practical meaning or value.

Even the ability to engage in the liberal professions is coming to depend increasingly not only upon personal qualities and skill, but also upon the possession of money. A doctor or lawyer must at least have a consulting room, which must be situated in a suitable part of the town; he also needs books and periodicals, and is involved, by reason of his profession, in certain other expenses which he dares not avoid. The doctor, and particularly the specialist, needs costly instruments and appliances, and must renew his equipment continually in order to keep abreast with the latest scientific inventions and discoveries. For all these things, considerable financial means are absolutely necessary. The far-reaching significance of this development in the liberal professions is revealed in a particularly striking way by the lead secured by the United States, in a number of fields, during the decade which followed the Great War, This country, because it was still rich and prosperous, was able to gain ground on those more seriously affected by the war, and particularly on impoverished Germany,

formerly so well equipped with scientific institutions of all kinds. It was in a position to set up and run institutions in many branches of research (not only, though chiefly, in medicine and the natural sciences) in greater number than could be dreamed of in post-war Germany, to equip them with the most expensive apparatus, and to finance experimental work on the most lavish scale.

The practical possibility of movement between the different trades, however, is reduced not only by obstacles blocking the entry to new occupations, but also by serious and sometimes insurmountable difficulties connected with the abandonment of accustomed occupations. These difficulties are of special importance in the struggle of the several trades and professions for their existence.

Difficulties of this kind may be of a purely economic character. Just as lack of capital may prevent a person from setting up in the trade which suits and pleases him best, so the investment of capital in a given trade may make it very difficult or impossible for the owner to withdraw it and invest it elsewhere. As was shown on an earlier page of this book, the owner of an undertaking is very likely to become the prisoner of his own investment, and to remain chained to the same business indefinitely even if it brings him only losses. The larger the investment, the greater is this danger of forced captivity.

But psychological as well as financial ties may bind a person to his trade; indeed, it happens very frequently that a man is prevented by pure sentiment from making up his mind to change his calling, though he knows

that there are rational arguments in favour of such a change. Even in the humblest occupations, both urban and rural, there are people so firmly attached to their accustomed work that the very idea of abandoning it is repugnant to them. The more special knowledge and skill is required for the exercise of a trade, the stronger this attachment tends to be. It is seen most clearly in the scientific professions and in the arts and crafts; but it applies also to the ordinary manufacturer, farmer, and merchant, both large and small. Many engaged in these occupations are impelled by love of their work, and pride in it, to resist developments by which they may be urged into new kinds of employment. This inner opposition to the abandonment of an accustomed trade is reinforced by love of *home* whenever a change of occupation would necessitate a change of residence. And this double attachment is usually very strong indeed—so strong that it defies the most trying economic conditions —when trade and home are part of the family heritage. In such cases the trade or profession is raised, in the eyes of its members, to the status of a social class, and defended in economic and political life with as much resolution as any caste or estate in earlier centuries.

The best example of the combined action of these influences which hold men to their trades, even in the hardest times, is provided by the peasant. The doctrine of free trade teaches that the soil is a commodity like the rest, and that the farmer who is unable to extract a livelihood from his land should leave it and earn his living elsewhere; one of his successors—if not the first, then a subsequent one—will ultimately succeed in

making the farm yield a profit, particularly if its price has fallen sufficiently. In spite of theoretic reasons for leaving his occupation, however, the peasant does not wish to do so. He clings tenaciously to his calling and his farm, especially if he has inherited them from his forefathers. He has his roots in the soil, and cannot be whisked away like a straw by the winds of free competition.

These hindrances to free movement may have the effect of making certain trades or professions fuller than they would be under conditions of free competition.

The worse a trade's economic situation becomes, reducing more and more of its members to straitened circumstances as a result of the decline of its total net income, the more clearly will all its members—even those not yet directly affected—realize that they are menaced by a *common* danger. Their sense of solidarity will become stronger, and they will come to share the conviction that the trade *as a whole* should take steps to protect their interests against this danger. They will perceive that the trade is not merely a theoretic conception, but also a natural and living body with characteristics similar to those of the nation, the State, or any other human community, whatever its uniting bond, which cannot or will not lose its members without a struggle. This view is the direct opposite of that of the classical economists, for these saw no fixed divisions between trades and professions, or if they saw them they refused to recognize their significance. The principle of free competition, which assumes absolute freedom of movement between occupational groups, is contradicted by

the cohesion of the different groups and the stability of their membership.

The trade creates organs both to manage its internal affairs and to represent it in its external relations, particularly in its relations to the State and the public. The interests of individual members of the trade are represented in these organs only in so far as the trade considers them to coincide with its own interests. Whether, for instance, Mr. X the bootmaker is doing better business than his rival up the street, Mr. Y, and whether Mr. Y ultimately loses all his customers to Mr. X and goes bankrupt, are questions of little importance to the trade as a whole—unless the case presents some special feature. But if Mr. Y is forced out of business because the whole of the formerly prosperous bootmakers' trade is suffering as a result of the rise of powerful competitors—e.g. footwear factories, either at home or abroad—his distress is no longer a purely individual affair; it is the sign of a danger which threatens the entire body of hand-sewn bootmakers, including those who have not yet been directly hit, and against which the trade as a whole must protect itself.

A further coincidence of the interests of the individual and of the trade to which it belongs resides in the fact that the influence which the latter can command in its dealings with the public depends largely upon the number and economic power of its members.

Just as in general the occupational organization concerns itself only with those of its members' interests which are also its own, so the State, when appealed to by a trade for help, has to consider whether, and if so

how far, the interests of this trade coincide with those of society as a whole. Only in the measure in which this condition is fulfilled should the State grant the help demanded. Only if the community as a whole considers it right, for the sake of *its own* welfare, to maintain the membership of a declining trade by public support, should this support be given.

In the more advanced countries the interests of the State have long been seen to include the provision of a sufficient or appropriate income to one profession, namely the civil service. Not for the sake of its servants, but in its own vital interests, every civilized State realizes that it must strive to prevent their standard of life from sinking too low, lest the quality of their services should fail to meet the important demands made upon them. The efficiency of a service is bound to decline if the type of person needed in it can easily find more favourable conditions of employment elsewhere. Moreover, the danger of corruption shows its head wherever regular remuneration falls below a certain level.

Similar principles are applied to the liberal professions of a semi-official character. The following passage, for instance, was contained in an official statement of the reasons for the adoption of regulations to govern the profession of practising lawyer in Germany:

> "Above all, the point should be borne in mind that fees must suffice to provide the lawyers whose services are needed for the proper administration of justice with adequate remuneration for their work and the prospect of a permanent income worthy of their status.

This last factor is of great importance from the viewpoint of the administration of the law; for the more independent the lawyer can be made, by the guarantee of his financial security, the more likely he will be to do what he can to keep unmeritorious disputes out of the courts, and so help to develop public respect for law and order."[1]

If, however, these principles apply to the public services and the semi-official professions, they must apply also, in their main features, to all professions and trades. For the State, as for the competent trade organizations, it may be immaterial whether it is bootmaker X or bootmaker Y who is compelled, by the competition of the other, to shut up shop; one bootmaker may be sufficient for the neighbourhood in question, and the one who has driven his rival from the field may be assumed to be the better workman. But if craftsmen are thrown out of business in large and increasing numbers, so that the whole body threatens to disappear, its members becoming wage-earners or paupers because factory products are replacing their own work, the State cannot possibly remain indifferent. Nor can it stand by unmoved if for instance the factories in some particular branch of the national industry are obliged to close their doors and dismiss their workers because cheap foreign goods are flooding their markets. In such cases as these, it has to answer the question whether the maintenance of a healthy and contented class of craftsmen, or of a

[1] Quoted by Walter-Joachim in *Die Gebuhrenordnung für Rechtsanwälte*, fourth edition, 1904, p. 22.

particular branch of industrial production, is not of greater importance to the life of the community as a whole than the consumers' desire for the lowest possible prices. The health of the human body is safeguarded not by the mere presence of heart, stomach, lungs, kidneys, and so on, but by the adjustment of the relative size and activity of these organs, in accordance with a plan carefully elaborated by nature. The body politic requires analogous safeguards. It is not a matter of indifference to society how large or how powerful its different organs are in relation to each other; their harmonious functioning is an essential condition of its capacity to live and produce; the atrophy or hypertrophy of any one of them may endanger the wellbeing of the whole.

The existence or maintenance of a trade or profession as such may be justified not only on account of its economic value, but also in view of the political or cultural benefits that it confers upon the community. All three of these considerations were of importance, for instance, in the struggle carried on during the last decade of the nineteenth century by the farmers of many parts of the Old World (particularly of Germany) against the rising tide of foreign competition. Improved means of international transport were making it possible for the new countries, whose soil enabled them to cultivate cereals at much lower cost than the old, to pour their grain into the European markets and undersell the home producers who had previously enjoyed a position of monopoly. Like the English agricultural community after the repeal of the corn laws in the middle of the

century, the farmers of other parts of the Old World seemed destined to disappear, unless a stop could be put to the decline in prices due to oversea competition.

The main argument advanced in such situations as this, to support the claims of the farming community to protection, is that the State needs to be politically and economically independent to the greatest extent possible, and that in order to maintain such independence it should aim at the greatest possible measure of self-sufficiency in the production of necessary foodstuffs. Even before the Great War this argument was based on the danger of international hostilities in which the country might be cut off by its enemies from its foreign sources of supply, and so obliged to increase its own production far beyond the normal peace-time volume. In order to anticipate such an emergency, it was urged that the productive capacity of the country's agricultural system should be developed to and maintained at a level at which it would meet the demands made upon it in the event of blockade. The reply usually given to this argument before 1914 was that under modern conditions a war could not last very long, and that a reserve of grain sufficient for a certain time was all that was needed. But the Great War proved, both by its duration and by the efficacy of the blockade directed against the Central Powers, that this view was erroneous. And recent times, with their currency disturbances and transfer difficulties, have showed that the currents of international trade may be obstructed even under peaceful conditions. No country could count on being able at any moment to make up shortages in its own

supply of necessary goods by imports from abroad. Even where the importation of agricultural produce was still possible on the desired scale, it was often found to be far more costly than the measures needed to make farming profitable at home. A State may find it advantageous, even from the purely economic point of view, to meet the need for greater self-sufficiency by subsidizing its own agriculture, although its soil is less fertile and cultivation therefore more expensive than in other countries.

The protection of agriculture, however, may be justified by other considerations besides the necessity of ensuring that the nation shall be supplied with essential foodstuffs. One of these is the necessity of keeping the agricultural population as such—or at least a substantial part of it—on the land. For it is a well-known fact that when once the peasants have been uprooted from the soil they are not so easily replaced by newcomers to their calling as are the workers of many other branches of production. In many other trades the passing on of the same occupation from father to son, generation after generation, is indeed found to lead in a surprising degree to the inheritance of special mental and physical characteristics required by the nature of the work. But this happens more in agriculture than in any other walk of life. Cases are known, of course, of town-dwellers who have devoted themselves enthusiastically to farming, and done well in it. But such cases are exceptional, and must be so under present conditions. In the modern world, agricultural life is so far removed from the sphere of commerce and industry, and calls for such different

personal qualities—intellectual, and more still, emotional—that such changes of occupation cannot be expected to succeed on a large scale. What can be learned of the farmer's trade is within the reach of anyone willing and able to study seriously. But much of the most necessary of the farmer's knowledge cannot be learned; it must be "in the blood"; it is the exclusive wisdom of those who grow up from earliest childhood in the mental and emotional atmosphere of agriculture. Moreover, even if, in rare cases, an outsider may succeed, despite all handicaps, in making good in this trade, there is the question of his wife and family. In farming, particularly peasant farming, more than in any other occupation, the co-operation, understanding, and sympathy of the whole family, and especially of the wife, are of vital importance to the principal breadwinner. The settler's wife, as well as the settler himself, must have the right temperament and character for the new life. She will have not only to go without many of the external amenities to which urban conditions will have accustomed her, but also to learn submission to the will of nature. The farmer's working hours are determined not by timetables and regulations, but by light and darkness, sun and rain, and the tasks to be done. He and his wife must be prepared to give themselves wholly to their work, and yet to see its results being determined more clearly than those of almost any other kind of activity, by the hand of a Power whose constantly asserted supremacy requires of them submission and humility.

There is another point, in connection with this aspect of agriculture, which is important from the cultural

and political standpoints. The farmer's place of work is also his home. Farm and home are normally but two names for the same plot of land, the same buildings. Love of the calling and love of home are inseparable elements of a single emotion, not only with the independent farmer-owner, but often, strangely enough, with the farm servant and the agricultural labourer (though not the itinerant labourer) also. This attachment to the soil may, of course, degenerate into narrow-mindedness and egoism. On the other hand, receptiveness to the idea of a single world economy and to humanitarian ideals in general, which is usually greater in the more mobile sections of society, may lead to the extinction of all profound feeling for home and country. Both these tendencies, the restrictive and the expansive, are of course valuable to the community, and their co-existence provides a healthy atmosphere. But so long as humanity remains divided into nations and States of which each is obliged to defend its own interests, love of country must play the leading part. It is easily comprehensible, therefore, that the protagonists of the farmers' cause should lay special emphasis on the value of the agricultural population from this point of view, and argue that the State must, for its own sake, see to it that "just" prices of farm products shall provide this population, even at the expense of the community as a whole, with a fair livelihood. For if it is desired to conserve the specific qualities of the peasantry for the sake of the State, every effort must be made to keep the old farming families on the land.

Although he is an independent *entrepreneur*, the peasant

does not work with large amounts of capital; he belongs, therefore, to the independent part of the section of society known as the *middle class*. Nearly every group included in this part of the middle class is involved, from time to time, in a struggle for its existence similar to that waged by the farmer, and most of them make use of arguments similar to those just reviewed.

During the Middle Ages, the independent professions in manufacture and trade, which correspond roughly to the urban middle class of the present day, were organized in gilds and corporations which safeguarded their existence by ensuring the maintenance of the *justitia pretii*; and even in the period of State absolutism the influence of these professions determined economic policy to a large extent. The situation changed, however, with the rise of large capitalist undertakings, and the increasing political influence of the doctrine of free trade by which this development was promoted. The competition of the new undertakings threatened more and more seriously the existence of those still working, whether as manufacturers or as traders, with the old methods and with small capital resources. They found it increasingly hard to keep their prices down to the level made possible for the large undertakings by their greater capital and more rational methods. The consequence was a desire, which soon became an urgent demand, for the renewed grant of official support: the professions affected called for measures to put a stop to the downward movement of prices, in order that their threatened existence, as professions, might be saved.

The principal argument put forward to prove that it

is in the State's own interests to give the support demanded, is that the trades engaged in by the independent members of the middle class are valuable, and indeed indispensable, to a well-ordered society. Their special political and cultural value is held to consist in an influence on the formation of the characters of their members similar to that attributed to agriculture.

The personal characteristics required and fostered by the small independent business are essentially the same in every trade, whether urban or rural, and whether mainly intellectual or manual. They are connected with two principal aspects of this type of business: the nature of independent business activity as such, and the modest capital and income involved. The decisive element in the former connection, from the point of view of character-building, is the feeling of professional *independence*, responsibility, and self-reliance, which distinguishes the independent *entrepreneur* from the person employed at a fixed rate of remuneration, in a position of dependence on his employer, bound by his decisions, and involved in his destiny. This difference of intellectual and emotional attitude is all the greater if a pension attaches to the employee's position, relieving him to a large extent of cares regarding the future of himself and his family. The second aspect of this type of business, namely the *smallness* of the capital and income of the independent worker, is a valuable educational factor, training him not only in his business but also in his private life to the careful use of his means, which must suffice both for present and for future needs. If to these two characteristics is added the independent worker's

natural consciousness of status and pride in his profession, a combination of qualities results which is well suited to create a highly valuable cultural, political, and economic tradition.

It is not suggested that these personal qualities are never found among employees or wealthy *entrepreneurs*. The briefest examination of the facts would suffice to disprove such a suggestion. But positions involving dependence on an employer usually lack that educative *urge* which arises from a man's consciousness that his prosperity or poverty will be determined exclusively by his own, independent decisions regarding the conduct of his business. And the wealthy *entrepreneur*, on the other hand, is only too likely to have no occasion to learn economy either inside or outside his business. It is no accident that during the post-war depression the independent traders of the middle class showed far greater powers of resistance, and were able, on the whole, to carry on much more successfully, than the large-scale *entrepreneurs*, whose distress sometimes reached dimensions which gave the impression that the entire capitalist system was about to collapse.

22

Self-Protection and State-Protection of Professions and Trades of National Importance

When the more harmful effects of free competition made themselves felt, the persons affected did not at

first turn to the State for help. Their first reaction was a desire once again to combine more closely in professional groups for the defence of common interests. The sense of community, deeply rooted in the producing classes and as little destroyed as the idea of a *justitia pretii* by the unfavourable evolution of industrial law, awoke with renewed vitality. The old professional organizations revived, and new bodies were formed with the purpose of combating the dangers inherent in the new legislation. In most civilized States there is today hardly a single trade or calling which has not its own organization. With the progress of specialization these organizations are increasing in number in every branch of economic activity—agriculture, industry, trade, and the liberal professions. There are generally separate organizations, in each occupation, for employers and independent persons on the one hand, and employees and workers of all categories on the other. Their internal structure varies very widely indeed, from the loosest kind of constitution to the most rigid (the latter type being found particularly among organizations having the character of public bodies).

Up to a certain point, a profession or trade can itself take measures to ward off threats to the price-level which represents its minimum requirements. This is possible, in particular, when it is the members of the profession or trade concerned who are endangering the price-level. The case may be one of what the profession or trade regards as unfair competition between its members. A powerful trade organization may intervene successfully even when, from motives entirely free

from self-interest, a member furnishes his goods or services at a price which it considers below the level of its subsistence prices—for instance, when a doctor, simply for the pleasure of helping his suffering fellow-men, offers his services freely or at a lower fee than his colleagues. For even price-cutting due to absolutely unselfish motives can, if effected on a large scale, force the members of an occupation to reduce their prices in order to keep their clients, and this reduction may be so great that those who are entirely dependent on their earnings in the occupation concerned are no longer able to extract a living from it. In order to prevent such a development as far as possible, trade organizations sometimes lay down fixed scales of minimum prices and minimum wages (salaries, fees, etc.) to be observed by their members.

The price-level may also be endangered by an excessive increase in the number of persons entering the trade. The supply of the services and products of this trade may then exceed demand by a substantial proportion, with the result that all the members feel themselves obliged to work for wholly insufficient remuneration, only those who have other sources of income being able to live above the level of mere subsistence. The existence of the trade as a whole may be threatened by a decline in its prices due to this cause. Its task of keeping its membership at the right level, therefore, does not always consist in taking measures against decimation; it may, on the contrary, consist in preventing too great an influx of new members.

The means by which a depression of prices through

the overcrowding of a profession is resisted are still essentially the same as at the time of the mediaeval gilds. The most important of them are restrictions on the entry of foreign workers, and measures—such as the introduction of compulsory qualifying examinations —making it more difficult generally to enter the profession. When admission to a profession is made conditional upon the possession of certain personal characteristics, skill, and training, the immediate purpose of the imposition of these conditions is usually the maintenance of its intellectual and moral standards. Such measures are particularly justified in the case of professions whose exercise involves great responsibility, and in whose reliability the public and the State have therefore a special interest. For only when a profession is capable of performing its functions efficiently can it train and perfect in its members the particular qualities and capacities which make it specially valuable to the community as a whole. The importance to the State of these qualities and capacities justifies it in ensuring that the remuneration of the body of workers in question shall be sufficient.

A trade association cannot impose a measure likely to be unpopular with its members unless it has means of exerting pressure upon them and punishing those who fail to comply. As a general rule, moreover, no measure for the direct or indirect regulation of prices or remuneration rates can be completely successful unless it applies to *all* engaging in the trade concerned. The trade association naturally strives, therefore, either to include all these persons in its membership or to obtain compulsory powers over unorganized non-

members. The trade unions with Marxist leanings, at any rate, have always claimed the right, as soon as they have enrolled in their ranks the majority of the workers concerned, to represent the remainder in wage negotiations and to bind them by their decisions. In most cases, these conditions and claims can be satisfied only by the State, which alone can give the trade associations the powers desired—where it does not regulate economic activity directly, through its industrial legislation, to the satisfaction of the groups concerned.

The problem of the just price, and its close relation to that of the place of the trades and professions in economic life, may be perceived most clearly in the struggles which take place not within the several occupations, but between them: in connection, that is, not with the defence of the interests of a trade *vis à vis* its individual members, but rather with that of conflicts in which whole trades are pitted against external opponents, particularly other trades.

The difference between one professional group and another, and the reason why the members of one *feel* themselves to be distinct, as a group, from those of another, is often nothing more than a difference of professional qualification. This is the distinction between the contending forces in the struggle of regular doctors against "quacks," regular lawyers against "pettifoggers," certificated engineers, chartered accountants, trained teachers, and so on, against their unqualified competitors. Obviously these professional antagonisms are fundamentally economic in character. The members of the more highly qualified or skilled group are afraid that their

level of remuneration, which enables them to live as befits their status in society, will be depressed as a result of the cheaper services or goods of their competitors, whom they regard as their inferiors. The services or goods are of the same nature, and are intended for the same purposes (the healing of disease, the giving of legal or other expert advice, education, etc.) in both cases; but the average quality of those furnished by the untrained groups is regarded as inferior to that of their trained rivals, or perhaps as so poor as to be worthless. If misleading advertisement or the lower costs of their training and professional activity enable uncertificated and inferior workers to underbid the prices charged by their profession as a whole, the subsistence of the qualified section of the profession is endangered, and with it the advantage which the community derives from its expert services.

The most usual threat to a profession's *justum pretium* comes from the competition not of inferior but of socially and economically equal workers, who are enabled to offer their services or products at lower prices than the other members of the profession by the more favourable conditions under which they work. This type of competition has existed from very ancient times between local establishments with fixed places of business, on the one hand, and on the other outside undertakings whose activity is carried on by itinerant traders, sometimes without any fixed centre at all—hawkers, for instance, and outside agents in local markets and fairs. It exists today, in a still higher degree, between local shops with local connections and large stores

operating through the post or through the more personal medium of travelling representatives. A quite new form of itinerant trading is that of hawking with a motor car, the car being stocked either with a single commodity or with the most miscellaneous goods, and whole districts being visited systematically. The business operating locally from a fixed seat is very often handicapped by higher costs than undertakings of these types. The hawker needs no shop, the itinerant cobbler no workshop, the mail-order house no branch establishments. These advantages are particularly important when the freedom from local taxation which they involve is not neutralized by any special charge. One of the chief demands put forward by local establishments for their protection, therefore, is that special taxes should in justice be imposed on firms operating over wide areas in order to make it impossible for them to do business at lower prices than those necessary to ensure the subsistence of their local competitors.

Recent technical and financial developments in large-scale capitalist productive and commercial activity have created many economic rivalries similar to those just described. The most outstanding examples of such competition are offered by the struggle between handicrafts and factory production, small factories (small mills, breweries, etc.) and large-scale undertakings, small retail shops and large retail establishments (especially department and multiple stores). In all these cases, the advantage of the large undertaking resides chiefly in its superior capital resources. Its greater financial strength enables it to buy raw and manufactured products in

great quantities, and therefore relatively cheaply, to attract the best workers and install the best machinery, to make the best possible use of both these factors by an elaborate division of labour, to advertise its wares very widely, and to be satisfied with low profits on each article because of the enormous volume of its sales. The possession of large capital resources, in short, places in the hands of the large-scale producer or trader weapons which are not available to his small competitor. It is of no practical importance, in this connection, whether the resources belong to "capitalists" or to co-operative societies or other organizations of the kind whose legal structure permits them to operate like wealthy individuals although they are really composed of persons of modest or very small means. If the State considers it necessary in its own interests, whether primarily economic, political or cultural, to preserve the independent middle class, it will be obliged to take steps to hinder large-scale business from exploiting to the full its advantages over the small undertaking.

Measures for this purpose may be of many different kinds, from legislation restricting radically the freedom of movement of capital by prohibiting or making more difficult the formation of cartels and trusts (as in the United States), to minor administrative measures repressing undesirable forms of business by police action. A particularly convenient means of offsetting differences of economic power is that of taxation. The fiscal legislation of Germany during the last few decades has been based, to a large extent, on the principle of progressive taxation. The burden of taxation is not

merely proportionate to the size of the undertaking, as measured by its turnover, the volume or weight of the raw materials used, or some other index of production; it increases *progressively*, so that the larger undertaking its subjected to a fiscal charge capable of compensating, with more or less precision, the advantage of lower production costs which it enjoys over its small competitor.

There are also cases of legislative and administrative measures adopted with the deliberate intention of creating competitive inequality. These are found, for instance, in undertakings belonging to public bodies but competing with private firms: State or municipal banking institutions and municipal bakeries, butchers' shops, workshops of different kinds, and so on. The purpose of such undertakings may of course be simply that of protecting the consumers, by their competition, against an excessive rise in the prices of the private firms engaging in the same lines of business. But they sometimes enjoy fiscal exemptions or preferences, or advantages of other kinds (e.g. special facilities for procuring customers) which are due exclusively to their connection with a public body. They may be enabled, in this way, to underbid their private competitors to such an extent that these can no longer, as a profession, earn a living. Such competition constitutes yet another case of an economic battle fought on unequal terms, and is regarded by the persons engaged in private business as especially unjust if they have themselves been obliged, as taxpayers, to provide part of the funds by which it is made possible. This applies particularly where cheap prison labour is allowed to compete with that of free workers,

independent or employed, and where its cheapness is due to the fact that the prisoners are maintained at the expense of the State and remunerated, if at all, at a rate below that prevailing in the open market.

A very important field in which whole trades and professions are often menaced by a form of competition which they consider unfair, and against which they invoke the State's protection, is that in which home producers encounter, on their own markets, goods produced in foreign countries.

Even a natural advantage possessed by the foreign competitor in respect of costs of production may, in certain circumstances, be regarded as rendering his competition unfair.[1] If, for instance, foreign farmers have much cheaper and more fertile land at their disposal, or the foreign producers of any commodity pay their workers considerably lower wages because their requirements are more modest, or a foreign country has cheaper transport facilities, it may be considered unjust to permit competition with home producers whose conditions of production and trade are less favourable.

But the foreign competitor's advantage may be artificially created, by special legislation of the State in question saddling its population as a whole, or certain of its occupational groups, with a smaller burden of taxation than that borne by the home producer. The foreign State may even positively encourage exports by special measures such as export bounties, or by the more modern device of currency depreciation—whether effected specially to facilitate dumping or for other reasons.

[1] See above, p. 169.

Even the free-traders, who approve, in principle, every price reduction due to foreign competition because it serves the common interests of consumers, have come more and more to distinguish between the "natural" advantages of the foreign competitor and those created by the economic policy of his Government. In order to compensate artificial inequalities of competitive strength resulting from State policy, many *laissez faire* economists now approve the adoption of counter-measures by the States adversely affected, particularly the imposition of special duties upon goods from countries which grant export bounties or depreciate their currencies. Even in the doctrine of free trade, therefore, the principle has now found acceptance that foreign competition favoured by special political measures is unfair, and entitles the home producers affected to State protection.

But if the so-called "natural" advantages of the foreign producer, supposed to arise independently of political measures and therefore to give rise to no claim to protection for the home producer, are subjected to closer scrutiny, they will be seen to differ less than at first appears from the "artificial" advantages. For the conditions of production enjoyed by *every* trade in *every* county are influenced by national legislation, and the costs of production of all goods are always determined, in part, by the institutions and activities of the *State*.[1] If it is admitted, therefore, that the interests of the State require the maintenance of any particular trade or profession, and hence the proper remuneration of its members, political intervention to safeguard the prices

[1] See above, pp. 93–94 ff, 175 ff.

of their products must be allowed in *all* circumstances, and not only when these prices are menaced by foreign competitors directly aided by their Governments.

The most usual means of safeguarding a threatened trade is the suppression of foreign competition, or, if not its complete suppression, the imposition of special handicaps upon it (import duties on goods, refusal of employment permits to workers, etc.). The aim of such measures is always the maintenance of the prices of home products and labour at a level at which they will preserve national trades regarded as vitally important to the State and incapable of surviving the competitive struggle unaided. From the standpoint of the welfare of the State, this price-level is regarded as the *just* level.

23

The Ideal of Just Price Legislation

It has been said that the State, as an active organism, is an essential factor in the creation of economic value, and that it has not to choose *whether*, but only *how* it shall intervene in the economic life of its citizens. If this is true, there must be a necessary and indissoluble connection between the problem of value in exchange and that of justice. For whether the commandment to act justly is regarded as a divine law of nature, or as a categorical imperative in the Kantian sense, or in some other manner, it cannot be denied that the will to justice is one of the essential characteristics of the civilized State, whatever the basis of its constitution.

But what is "just?"

Abstract definitions of the notion of justice are most difficult of application to the decisions of practical life. Even Ulpian's classical definition—"*justitia est constans et perpetua voluntas jus suum cuique tribuendi*"—leaves the individual free to decide what is the *suum* that is due to himself and others. It is only natural, therefore, that in all discussions on the questions whether the State should and could ensure just prices in general, those who answer these questions in the negative always base their arguments on the fact that people have different opinions as to what prices are just. In this matter more than any other, they say, the wish is father to the thought. Nowhere is it more difficult to discover an objective truth than here, where the just price has to be extricated from a tangle of desires and interests. The *justitia pretii* is an unattainable ideal. No one but a dreamer ignorant of the facts of life could fail to recognize that a general system of supposedly just prices, however well intended and conscientiously worked out, would be considered just by only one group of interests, while being condemned as unjust by others.

This argument is in itself perfectly correct. But it does not reach the heart of the problem under examination.

A general law can be perfectly adapted only to the particular cases which lie on the average of those falling within its scope. The necessity of generalization is thus a source of possible injustices in the application of a law to any case which does not correspond exactly to the average envisaged by the legislator. The consciousness

of this fact may lead the legislator to make provision for exemptions and special treatment in certain cases. But it will never be possible for any law to do full justice to all to whom it applies; life is too varied to be contained in legal definitions. Those who disapprove statutory price-regulation because it cannot satisfy the requirements of ideal justice thus place much more exacting demands upon it than they do upon other branches of legislation—demands which are not and cannot be fulfilled by any law.

The legislator can do no more than any other man: he can only *aim* at the ideal, and be content to approach it as closely as lies in his power. The rejection of the good because it is not the ideally good might lead, if applied consistently, not to the perfect regulation of man's life in society, but to the replacement of all law and order by anarchy. Laws serve a useful purpose, and may be approved if they deal justly with the average case, or the large majority of cases, for whose regulation they are intended. Those exceptional and never wholly avoidable cases in which their application would constitute a serious injustice can be provided for by means of clauses empowering the court or the administrative authority to depart from the letter of the law, in certain circumstances, and follow its own sense of justice.

Another objection raised by the opponents of the principle of statutory price-regulation is that such regulation is particularly likely to be used for the one-sided furtherance of private interests. The interests of the sellers demand the highest possible prices, while those of the buyers demand the lowest. If it is difficult

to reconcile these two parties in individual disputes as to the rightness of a given price, it is infinitely more difficult to reconcile them to general scales of prices or remuneration rates, or other direct or indirect regulative measures. Nor is the likelihood that the application of such measures will favour some groups more than others the only danger. A much more serious threat to justice is contained in the possibility that the legislator himself, however he may strive to be impartial, may become the plaything of competing economic forces. Unless he possesses the most thorough knowledge of the field in which he is legislating, the party which can present its case most skilfully will be able to secure a position of advantage, and influence the framing of the law in its own favour.

This objection, too, is inherently sound. Like the first, however, it applies not only to price regulation (and protectionist legislation) but to all legislation whatsoever. Nearly every law, whatever the field to which it refers, is the product of conflicts of interests in which opposing parties have vied with each other in gaining the legislator's favour. Quite apart from the human weaknesses of legislators, the fact that every law is and must be a compromise between opponents constitutes in itself an obstacle to the attainment of ideal justice. But when laws are passed which diverge too far from this ideal, so that they are widely regarded as unjust, experience shows that they cannot be kept in force; no system of laws can survive, in the long run, if it contradicts the sense of right and justice of society.

When a law causes dissatisfaction in individual con-

crete cases, close examination often reveals that the trouble is due not to the law itself but to the manner in which it is applied by the judicial or administrative authorities. Even the best laws cannot have their proper effect if they are administered by incompetent or partial officials. On the other hand, the wise application of a law, guided by a sound legal sense, may often avoid a too literal interpretation and thereby mitigate or prevent effects which would be considered unjust. The ability of the authorities to apply the law adequately is as important as the justice of the law itself.

The citizen who calls for justice in the State demands above all the certainty that those who deliver legal decisions shall be animated by a constant will to decide all questions justly, and shall not be hindered in the realization of this purpose. One of the primary duties of the civilized State, from which it is exempted only temporarily in times of revolution or war, is to guarantee the greatest possible independence and impartiality of its judges. If the settlement of a case requires special technical knowledge not possessed by the judge, so that experts have to be called in to assist him in forming his judgement, these experts are expected to be independent and impartial also. So long as a nation is satisfied as to the impartiality of those who administer the law, it usually accepts their decisions and treats them as right and just, even if it does not always understand them.

If this is true of the application of laws to the individual cases falling within their scope, it is true also of the making of the laws, including those destined for the establishment of the *justitia pretii*. Laws must be backed

by authority, and an unmistakable will to impartiality, on the part of the legislator.

But this impartiality is not a formal neutrality, an attempted abstention from the struggle by which prices are determined. For even if the State tries to hold aloof from economic life in this way, it does in practice, as the foregoing pages have attempted to show, aid some and injure other interests no less than if it supports or opposes them openly and deliberately. The State cannot help taking sides; it must do so, however, not in the interests of this or that particular group, but in order to serve the cause of the *common* welfare. *Salus publica suprema lex.*

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